

I. GUILTY PLEA

A. Summary of Terms. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the defendant, the attorney for the defendant, and the Government¹ agree that the defendant will plead guilty to Count One of the Information, which charge(s) the defendant with

Possession of Obscene Visual Representations of the Sexual Abuse of Children, in violation of Title 18 U.S.C. § 1466A(b)(1).

Forfeiture Allegation: In connection with the violation set out above, the defendant agrees to forfeiture of the property referred to below, pursuant to Title 18 U.S.C. § 1467.

¹ The word “Government” in this Agreement refers to the United States Attorney for the District of Idaho.

B. Waiver of Right to Challenge Constitutionality of Statute. The defendant understands that he could challenge the constitutionality of Title 18 U.S.C. § 1466A(b)(1) as applied to him. *See Stanley v. Georgia*, 394 U.S. 557, 568 (1969) (individual consumption of obscene materials within one's home is constitutionally protected under the First and Fourteenth Amendments). He also understands that there is sufficient evidence to charge him with violating 18 U.S.C. § 1466A(a)(1), receiving obscene visual representations of the sexual abuse of minors in interstate commerce, a section of the statute that has withstood constitutional scrutiny. *See United States v. Schales*, 546 F.3d 965, 974 (9th Cir. 2008) (upholding the statute because it requires the government to meet obscenity standard under *Miller v. California*, 413 U.S. 15(1973);² *United States v. Whorley*, 550 F.3d 326, 337 (4th Cir. 2008) (upholding statute for defendant downloading obscene Japanese anime cartoons, finding the statute "a valid restriction on obscene speech under *Miller*."))

In exchange for the benefit conveyed by this plea agreement, the defendant knowingly and intentionally waives (gives up) any right he might have to challenge the constitutionality of 18 U.S.C. § 1466A(b)(1) in any form, directly or indirectly.

C. Voluntariness. This plea is voluntary and did not result from force, threats, or promises, other than any promise made in this Plea Agreement. Upon acceptance of the defendant's guilty plea, and the defendant's full compliance with the

² The three-part *Miller* test is: (a) "whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." *Miller*, 413 U.S. at 24 (quotations omitted).

other terms of this Agreement, the Government, under Federal Rule of Criminal Procedure 11(c)(1)(B), will recommend a sentence within the range set by the United States Sentencing Guidelines, to be determined by the Court at the time of sentencing.

C. Oath. The defendant will be placed under oath at the plea hearing. The Government may use any statement that the defendant makes under oath against the defendant in a prosecution for perjury or false statement.

II. WAIVER OF CONSTITUTIONAL RIGHTS AT TRIAL

The defendant understands that by pleading guilty, he waives the following rights: 1) the right to plead not guilty to the offense(s) charged against the defendant and to persist in that plea; 2) the right to a trial by jury, at which the defendant would be presumed innocent and the burden would be on the Government to prove the defendant's guilt beyond a reasonable doubt; 3) the right to have the jury agree unanimously that the defendant was guilty of the offense; 4) the right, at trial, to confront and cross-examine adverse witnesses; 5) the right to present evidence and to compel the attendance of witnesses; and 6) the right not to testify or present evidence without having that held against the defendant. If the District Court accepts the defendant's guilty plea, there will be no trial.

III. NATURE OF THE CHARGES

A. Elements of the Crime. The elements of the crime of Possession of Obscene Visual Representations of the Sexual Abuse of Children, in violation of Title 18 U.S.C. § 1466A(b)(1), as charged in Count One, are as follows:

First, that the Defendant knowingly possessed a visual depiction;

Second, that the visual depiction depicts a minor engaging in

sexually explicit conduct;

Third, that the visual depiction is obscene;

Fourth, that the defendant knew of the sexually oriented nature of the visual depiction;

Fifth, that the visual depiction involved in the offense had been mailed, shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that had been mailed, or that had been shipped or transported in interstate or foreign commerce by any means, including by computer.

B. Factual Basis. If this matter were to proceed to trial, the Government and the defendant agree that the following facts would be proven beyond a reasonable doubt:

In December 2008, the German Federal Police, child pornography unit, advised the U.S. Immigration and Customs Enforcement Attache in Frankfurt of a German criminal investigation into the distribution of child pornography via the Internet. The investigation involved the distribution of a known child pornography file on the "eDonkey2000" and "Emule" peer-to-peer file sharing networks. The ICE Attache in Frankfurt requested the assistance of agents in the United States in determining the identity of the users in the United States who had offered to share the relevant file for download. The IP address of Steve KUTZNER, a resident of Boise, Idaho was identified as offering the file for download on October 4 and 5, 2008.

On August 25, 2009, Special Agent Daren Boyd and other agents of the Department of Homeland Security, Immigration and Customs Enforcement, contacted Steven KUTZNER at his home at 651 W. Pennsylvania in Boise, Idaho. They identified themselves and explained that they wanted to conduct a forensic search of his computer because they had information that his IP address had received illegal material over the Internet sometime in 2008.

KUTZNER was cooperative and agreed to let the agents enter his house. KUTZNER read and signed an ICE Computer Forensics Consent to Search Form (CFA 103) authorizing the agents to search his computer. KUTZNER had one custom built Master Wave Computer tower, Serial Number 03350107443, containing a Seagate 250 Gigabyte Hard drive, Serial Number 9RY1N6N7, labeled "Product of Thailand" (and a Western Digital hard drive that did not contain any illegal material).

Idaho State Police Computer Forensics Examiner (CFE) Vincent Montoya began a forensic preview of the computer at KUTZNER's home. While that preview was taking place, KUTZNER admitted to SA Boyd that he had used the "eMule" file sharing network in the past. The preview was taking longer than expected, and KUTZNER gave the agents permission to take his computer for 24 hours to complete the forensic preview. That preview led to the discovery of images that resulted in the agents obtaining a search warrant for the computer within that 24 hour period. The media was subsequently examined by CFE Montoya.

On the Seagate hard drive, Montoya found a folder labeled "Porn." In this folder are six hundred and thirty two (632) image files. One hundred and eight (108) of these files contain animated (cartoon) pornographic images. Seventy (70) of these animated pornographic image files depict minors engaging in sexually explicit conduct. Included in these seventy (70) images are cartoon depictions of prepubescent minors engaging in bestiality, masochistic abuse, and sexual intercourse with other minors and adult cartoon characters. Many of these sexually explicit images depict the child characters from "The Simpson's" animated television series. An Internet search of the encyclopedia website www.wikipedia.org listed the three minor-aged Simpsons character's ages as ten, eight, and baby.

SA Boyd printed four of these depictions from KUTZNER's computer and showed them to KUTZNER on August 26, 2009. These images are described below:

A. A cartoon depiction of the Homer Simpson cartoon character (an adult) sitting on a couch and receiving oral sex from the Lisa Simpson cartoon character (a minor). This file was found on the C drive of KUTZNER's computer in a folder titled "Porn." This file was saved into this folder on July 28, 2009.

B. A cartoon depiction of the Bart Simpson cartoon character (a minor) standing up nude and receiving oral sex from the Maggie Simpson cartoon character (a toddler) who is also nude. The Maggie Simpson character also has a pacifier inserted into her vagina and the Bart Simpson character has a commentary bubble over his head that states, "Ah, you're little sucker! You like it, Maggie, don't you? I guess this thing tastes better, than your pacifier!" This file was found on the C drive of KUTZNER's computer in a folder titled "Porn." This file was saved into this folder on July 28, 2009.

C. A cartoon depiction of the Lisa Simpson cartoon character (a minor) kneeling down under what appears to be the underside of a horse or pony and holding an erect penis in her hand. She is nude and appears to be covered with a liquid substance and is licking her lips. A caption over the images reads, "See, Marge, she loves her new pony." "But Homer, we can't afford it. And besides, she's naked and playing with his THINGIE!" This file was found on the C drive of KUTZNER's computer in a folder titled "Porn." This file was saved into this folder on July 28, 2009.

D. A cartoon depiction of the Maggie Simpson cartoon character (a toddler) nude and engaging in vaginal sex with the torso of what appears to be a male adult character. The caption above the images reads, "A little shoving can go a long way...." This file was found on the C drive of KUTZNER's computer in a folder titled "Porn." This file was saved into this folder on July 22, 2009.

KUTZNER initialed each image showing that he recognized them. SA Boyd questioned KUTZNER about these files. KUTZNER admitted that he downloaded them from the Internet

from the website he referred to as "Imagefap." The Internet site "www.imagefap.com" is a pornography gateway site with links to many different genre of pornography, including erotic cartoons.

The parties agree that the seventy cartoons depicting sexual acts involving minors found in the "Porn" file of KUTZNER'S Seagate hard drive are obscene, in that they: 1) appeal predominantly to prurient interest; 2) depict sexual conduct in a patently offensive way; and 3) taken as a whole, lack serious literary, artistic, political, or scientific value.

At all times relevant to this case, KUTZNER's Internet Service Provider was Cable ONE. According to its website, Cable ONE is an operator of cable systems that serves approximately 720,000 customers in 19 states with cable television, telephone and high-speed Internet service. Cable ONE is a wholly owned subsidiary of the Washington Post Company, headquartered in Washington DC. The corporate headquarters for Cable ONE are in Phoenix AZ. Cable ONE's computer servers are housed in Phoenix, AZ, meaning that any files sent or received on KUTZNER's computer via the Internet traveled in interstate commerce.

Relevant Conduct:

Besides the sexually explicit cartoons, the "Porn" folder on KUTZNER's computer also contained five-hundred-and-twenty-four (524) pornographic image files. Most of these files depict pornographic images of teenaged females. It is difficult to determine if the females in these files are less than 18 years of age, however none are prepubescent.

CFA Montoya also discovered on KUTZNER'S computer eight-thousand-eighty-nine (8,489) files containing images described by the examiner as possible Child Erotica. Child Erotica refers to non-nude or semi nude photographs and videos of children in sexually suggestive

poses that are not themselves images of child pornography, but still fuel the sexual fantasies of pedophiles and others who have developed a sexual interest in minors. The majority of the files identified by CFA Montoya as possible Child Erotica were found in the Windows Recycler or in Unallocated Space on KUTZNER's computer.

Additionally, CFA Montoya found that KUTZNER had two different cleaning programs installed on his computer. They are CCleaner and Eraser. CCleaner is a system optimization, privacy and cleaning tool that removes unused files and cleans traces of one's online activities, such as Internet history. The last time CCleaner was run on KUTZNER's computer was August 24, 2009. Eraser is described as a secure drive eraser method to erase files, folders and their previously deleted counterparts from one's computer. The last time Eraser was run on KUTZNER's computer was August 10, 2009.

During his interview with SA Boyd on August 26, 2009, KUTZNER admitted to installing these two programs on his computer. KUTZNER said that he originally installed the Eraser cleaning software on his computer to get rid of viruses on his computer, but that over time he used it to erase the child pornography files that he had downloaded from "eMule," and other files from his computer. "eMule" is a peer-to-peer file sharing network commonly used by individuals trading child pornography, obscenity and various other types of files. *See* www.emule.com. KUTZNER also admitted some of the search terms he used on "eMule" were "models," "lolita," "teen," "hardcore," "pthc" and "hussy." He said these terms resulted in files containing images of child pornography, which he claimed not to want, so he stopped using these terms. He said he had seen images of child pornography as a result of some of his "eMule" searches, but that he would delete these images. KUTZNER described these images as

pornographic images of pre-pubescent or not developed children.

IV. SENTENCING FACTORS

A. Maximum and Minimum Penalties. A violation of U.S.C. § 1466A(b)(2), as charged in Count One, is punishable by a term of imprisonment of up to 10 years, a term of supervised release of not more than 3 years, a maximum fine of \$250,000, and a special assessment of \$100.

B. Supervised Release. Following release from prison, the defendant may be placed on supervised release for not more than 3 years.

The law permits the combined prison time and term of supervised release to exceed the maximum term of incarceration for the crimes to which the defendant is pleading guilty. Violation of any condition of supervised release may result in further penalties and/or prosecution.

C. Fines and Costs. The Court will likely impose a fine. No agreement exists as to the amount of the fine. The Court may also order the defendant to pay the costs of imprisonment, probation, and supervised release.

D. Special Assessment. The defendant will pay the special assessment before sentencing and will furnish a receipt at sentencing. Payment will be made to the United States District Court, Clerk's Office, Federal Building and United States Courthouse, 550 West Fort Street, Fourth Floor, Boise, Idaho 83724.

E. Restitution. Restitution is not an issue in this case.

F. Forfeiture.

The defendant understands that the Court will, upon acceptance of guilty plea, enter an order of forfeiture as part of sentence, and that the order of forfeiture may

include assets directly traceable to the offenses, assets used in the commission of the offenses, substitute assets and/or a money judgment equal to the value of the property derived from, or otherwise involved in, the offenses. Specifically, the defendant agrees to immediately forfeit to the United States the property set out in the Forfeiture Allegations of the Information.

G. Other Penalties and Proceedings.

The defendant acknowledges that the forfeitures set out herein are separate from all other penalties, including monetary ones. The defendant also agrees to consent to any abandonment proceeding as to forfeitable property herein, and to the entry of orders of forfeiture for such property, including civil administrative forfeiture, civil judicial forfeiture, or criminal forfeiture which may be brought against the property, and agrees to waive the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, advice regarding the forfeiture at the change-of-plea hearing, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. If this Agreement is withdrawn for any reason, the defendant waives the right to contest all civil and administrative forfeitures which began before the withdrawal.

H. Assisting the Government with Regard to the Forfeiture.

The defendant agrees to assist fully in the forfeiture of the foregoing assets. The defendant agrees to complete a personal financial statement and to disclose all of assets and sources of income to the Government, including all assets over which he exercises or exercised direct or indirect control within the past three years, or in which the defendant has had any financial interest, and to cooperate in obtaining any records

relating to ownership of such assets when sought by the Government, and to take all steps necessary to pass clear title to the forfeited assets to the United States, including but not limited to executing any and all documents necessary to transfer such title, assisting in bringing any assets located outside of the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. The defendant further agrees that he will not assist any third party in asserting a claim to the forfeited assets in an ancillary proceeding or related civil forfeiture case, and that he will testify truthfully in any such proceeding.

The defendant represents that he is the sole owner of the properties and property interests listed above, except as specifically set out herein. The Government is relying upon the defendant's representations in entering into this Agreement. If the defendant's representations are false or inaccurate, the Government may pursue any and all forfeiture remedies available at law or equity based on the violations covered by this Agreement.

I. Waiver of Further Challenge or Review of Forfeiture.

The defendant further agrees to waive all constitutional, legal and equitable challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also agrees not to challenge or seek review of any civil or administrative forfeiture of any property subject to forfeiture under this Agreement, and will not assist any third party with regard to such challenge or review or with regard to the filing of a petition for

remission of forfeiture.

J. Non-Abatement of Criminal Forfeiture.

The defendant agrees that the forfeiture provisions of this Plea Agreement are intended to, and will, survive, notwithstanding the abatement of any underlying criminal conviction after the execution of this Agreement. The forfeitability of any particular property pursuant to this Agreement shall be determined as if defendant had survived, and that determination shall be binding upon the defendant's heirs, successors and assigns until the agreed forfeiture, including any agreed money judgment amount, is collected in full. The defendant acknowledges and agrees that this Agreement to disgorge the defendant's wrongfully obtained criminal proceeds for the benefit of the defendant's victims is remedial in nature, and therefore that the defendant intends for the disgorgement to be completed regardless of any possible future abatement of defendant's criminal conviction.

K. Court Shall Retain Jurisdiction.

The defendant agrees to forfeit the properties as stated above, or to substitute properties of equal value, at the Government's option. The United States District Court for the District of Idaho shall retain jurisdiction to settle any disputes arising from application of the foregoing forfeiture provisions.

V. UNITED STATES SENTENCING GUIDELINES

A. Application of Sentencing Guidelines. The Court must consider the United States Sentencing Guidelines (USSG) in determining an appropriate sentence under 18 U.S.C. § 3553. The defendant agrees that the Court may consider "relevant conduct" in determining a sentence pursuant to USSG § 1B1.3.

The Court is not a party to the Plea Agreement. The Plea Agreement does not bind the Court's determination of Sentencing Guidelines range. The Court will identify the factors that will determine the sentencing range under the Sentencing Guidelines. While the Court may take the defendant's cooperation, if any, and the recommendations of the parties into account, the Court has complete discretion to impose any lawful sentence, including the maximum sentence possible.

Recognizing that the Court is not bound by this Agreement, the parties agree to the recommendations and requests set forth below.

B. Sentencing Guidelines Recommendations and Requests.

1. **Acceptance of Responsibility.** If the defendant clearly accepts responsibility for the offense, the defendant will be entitled to a reduction of two levels in the combined adjusted offense level, under USSG § 3E1.1(a). The Government will move for an additional one-level reduction in the combined offense level under § 3E1.1(b) if the following conditions are met: (1) the defendant qualifies for a decrease under § 3E1.1(a); (2) the offense is level 16 or greater; and (3) the defendant has timely notified authorities of the defendant's intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. If, before sentence is imposed, the defendant fails to meet the criteria set out in USSG § 3E1.1, or acts in a manner inconsistent with acceptance of responsibility, the Government will withdraw or not make such a recommendation.

2. **Joint Recommendations.** The parties jointly make the following recommendations, and agree that the following shall be included as terms of the defendant's

sentence, expressly bargained for as a part of this plea agreement:

a) **Psycho-Sexual Assessment** --The defendant will submit to a sex offender evaluation pursuant to Title 18, United States Code, Section 3552(b) prior to sentencing in this case. It is the defendant's obligation to secure this evaluation from a mental health professional certified by the Idaho Sex Offender Classification Board (see, <http://www2.state.id.us/socb/>). The evaluation shall follow the format for psycho sexual evaluations set forth by the Idaho Sex Offender Classification Board and the Practice Standards and Guidelines for Members of the Association for the Treatment of Sexual Abusers (ATSA). The defendant agrees to submit to all evaluation procedures at the direction of the treatment provider, including phallometry and polygraph testing if the treatment provider deems them necessary.

b) **Waiver of Confidentiality** -- The defendant agrees to waive any right to confidentiality and allow the provider conducting the psycho-sexual evaluation (and any subsequent treatment) to supply a written report(s) to the United States Probation Department, the Court and the United States Attorney.

c) **Contact with Minors** -- The Defendant may not have direct or indirect contact with children under the age of eighteen, unless approved in advance, in writing, by his probation officer.

d) **Access to Minors** -- The Defendant will not reside or loiter within 300 feet of schoolyards, playgrounds, arcades or other places, establishments and areas primarily frequented by children under the age of eighteen.

e) **Occupational Restriction** -- The defendant may not engage in any paid occupation or volunteer service that exposes him either directly or indirectly to minors, unless

approved in advance, in writing, by his probation officer.

f) **Restriction on Computer/Internet Use** -- The Defendant may not possess or use a computer or other electronic device connected to the Internet without the prior permission, in writing, from his probation officer.

g) **Possession of Sexually Explicit Matter Involving Minors** -- The Defendant will not possess any child pornography or obscenity, or sexually explicit visual or text (written) material involving minors.

h) **Polygraph Testing** -- The Defendant agrees to participate in polygraph testing to monitor his compliance with supervised release and treatment conditions, at the direction of his probation officer and/or treatment staff.

i) **Post-Incarceration Treatment** - The Defendant will successfully complete any course of treatment related to his offense, as directed by his probation officer, including but not limited to cognitive/behavioral treatment for sexual deviancy under the direction of a qualified mental health professional who is experienced in treating and managing sexual offenders, such as a member of the Association for the Treatment of Sexual Abusers (ATSA). The defendant will follow the rules of the treatment program as if they are the orders of the Court.

j) **Search Provision** - The Defendant will be subject to a search of his person, home or vehicle, and any objects or materials (including computers and other types of electronic storage media) found therein, at the discretion of his probation officer.

k) **Conditional Use/Derivative Use Immunity** - As a condition of court-mandated evaluation and treatment, the defendant will be required truthfully to reveal his entire sexual history, including the possibility of other sexual crimes. In recognition of the fact that full

disclosure of that history is a necessary component of effective treatment, the government agrees that the defendant's admissions during psycho-sexual evaluation and sex offender treatment, to sexual crimes (*excluding homicide*) previously undisclosed to any law enforcement entity, will not be used against the defendant in a new criminal prosecution. *See United States v. Antelope*, 395 F.3d 1128 (9th Cir. 2005), and *Kastigar v. United States*, 406 U.S. 441 (1972). However, the parties agree that this use immunity and derivative use immunity, is expressly conditioned, upon: 1) the defendant successfully completing sexual deviancy treatment, and 2) the defendant not materially violating the rules of supervised release, and/or committing a sexual crime or a crime involving the sexual exploitation of children after the date of this agreement. If the defendant fails to complete all aspects of treatment, or fails to comply with all material supervised release requirements, or reoffends as described above, then this immunity agreement is rescinded and the government may use defendant's statements against him.

3. **Downward Departure or Variance Request by Defendant.**

Unless otherwise specified in this paragraph, the defendant will not seek a downward departure or variance under 18 U.S.C. § 3553(a), without first notifying the Government and informing it of the basis, in writing, not less than 21 days before the date set for sentencing.

VI. WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS

A. In exchange for the this Agreement, and except as provided in subparagraph B, the defendant waives any right to appeal or to collaterally attack the conviction, entry of judgment, and sentence.

The defendant acknowledges that this waiver shall result in the dismissal of any appeal or collateral attack the defendant might file challenging the plea, conviction or sentence in this case. Further, if the defendant violates this waiver it will be a breach of

this Agreement and the Government may withdraw from this Plea Agreement and take other remedial action.

If the defendant believes the Government has not fulfilled its obligations under this Agreement, the defendant will object at the time of sentencing; further objections are waived.

B. Notwithstanding subparagraph A, the defendant shall retain the right to file one direct appeal only if one of the following unusual circumstances occur; the defendant understands that these circumstances occur rarely and that in most cases this Agreement constitutes a complete waiver of all appellate rights:

1. the sentence imposed by the District Court exceeds the statutory maximum;
2. the District Court arrived at an advisory Sentencing Guidelines range by applying an upward departure under Chapter 5K of the Guidelines; or
3. the District Court exercised its discretion under 18 U.S.C. § 3553(a) to impose a sentence that exceeds the advisory Sentencing Guidelines range as determined by the District Court.

Notwithstanding subparagraph A, the defendant may file one habeas petition (motion under 28 U.S.C. § 2255) for ineffective assistance of counsel only if: (1) the motion is based solely on information not known to the defendant at the time the District Court imposed sentence; and (2) in the exercise of reasonable diligence, the information could not have been known by the defendant at that time.

VII. PROVIDING INFORMATION FOR THE PRESENTENCE REPORT

The defendant agrees to provide material financial and other information

requested by a representative of the United States Probation Office for use in preparing a presentence report. Failure to execute releases and provide such information violates this Agreement. Such failure will subject the defendant to additional penalties, including an enhancement under USSG § 3C1.1, or an upward departure under § 5K2.0, and relieve the Government of the obligations in this Agreement. Such failure will not, however, constitute grounds for withdrawing the plea of guilty unless the Government so requests.

VIII. NO RIGHT TO WITHDRAW PLEA

The defendant understands that the Court may not follow the recommendations or requests made by the parties at the time of sentencing. The defendant cannot withdraw from this Plea Agreement or the guilty plea, regardless of the Court's actions.

IX. CONSEQUENCES OF VIOLATING AGREEMENT

A. Government's Options. If the defendant fails to keep any promise in this Agreement or commits a new crime, the Government is relieved of any obligation not to prosecute the defendant on other charges, including charges not pursued due to this Plea Agreement. Such charges may be brought without prior notice. In addition, if the Government determines after sentence is imposed that the defendant's breach of the Agreement warrants further prosecution, the Government may choose between letting the conviction(s) under this Plea Agreement stand or vacating such conviction(s) so that such charge(s) may be re-prosecuted. If the Government determines that a breach warrants prosecution before sentencing, it may withdraw from the Plea Agreement in its entirety.

B. Defendant's Waiver of Rights. If the defendant fails to keep any promise

made in this Agreement, the defendant gives up the right not to be placed twice in jeopardy for the offense(s) to which the defendant entered a plea of guilty or which were dismissed under this Agreement. In addition, for any charge that is brought as a result of the defendant's failure to keep this Agreement, the defendant gives up: (1) any right under the Constitution and laws of the United States to be charged or tried in a more speedy manner; and (2) the right to be charged within the applicable statute of limitations period if the statute of limitations expired after the defendant entered into this Agreement.

Furthermore, if the defendant does not enter an acceptable plea, the Government will move to continue the trial now set to allow the Government adequate time to prepare. The defendant agrees not to contest such a continuance, and agrees that the resulting delay would be excludable time under 18 U.S.C. § 3161(h)(1)(I), (h)(3)(A), or (h)(8)(A).

X. MISCELLANEOUS

A. No Other Terms. This Agreement is the complete understanding between the parties, and no other promises have been made by the Government to the defendant or to the attorney for the defendant. This Agreement does not prevent any governmental agency from pursuing civil or administrative actions against the defendant or any property. Unless an exception to this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or obligate governmental entities other than the United States Attorney's Office for the District of Idaho. The Government will bring the defendant's cooperation and pleas to the attention of other prosecuting authorities at the defendant's or defendant's counsel's request.

B. Plea Agreement Acceptance Deadline. This plea offer is explicitly conditioned on the defendant's notification of acceptance of this Plea Agreement no later than 5:00 p.m. on September 10, 2010.

XI. UNITED STATES' APPROVAL

I have reviewed this matter and the Plea Agreement. I agree on behalf of the United States that the terms and conditions set forth above are appropriate and are in the best interests of justice.

WENDY J. OLSON
UNITED STATES ATTORNEY
By:

JAMES M. PETERS
Assistant United States Attorney

Date

XII. ACCEPTANCE BY DEFENDANT AND COUNSEL

I have read and carefully reviewed every part of this Plea Agreement with my attorney. I understand the Agreement and its effect upon my potential sentence. Furthermore, I have discussed all of my rights with my attorney and I understand those rights. No other promises or inducements have been made to me, directly or indirectly, by any agent of the Government, including any Assistant United States Attorney, concerning the plea to be entered in this case. In addition, no one has threatened or coerced me to do, or to refrain from doing, anything in connection with this case, including to enter a guilty plea. I am satisfied with my attorney's advice and representation in this case.

STEVEN KUTZNER
Defendant

Date

I have read this Plea Agreement and have discussed the contents of the Agreement with my client. The Plea Agreement accurately sets forth the entirety of the Agreement. I concur in my client's decision to plead guilty as set forth above.

D.C. CARR
Attorney for the Defendant

Date