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7  
8 IN THE UNITED STATES DISTRICT COURT FOR THE  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11  
12 UNITED STATES OF AMERICA, ) CR. F. NO. 05-0050 OWW  
 )  
13 Plaintiff, )  
 )  
14 v. ) MEMORANDUM OF PLEA AGREEMENT  
 ) UNDER RULE 11(c) OF THE  
15 ) FEDERAL RULES OF CRIMINAL  
 ) PROCEDURE  
 )  
16 TIMOTHY J. MYERS, ) Date: July 15, 2005  
 ) Time: 10:00 a.m.  
17 ) Place: Courtroom Two  
 ) Honorable: Oliver W. Wanger  
18 Defendant. )  
 )  
19  
20

21 Under Rule 11(c) of the Federal Rules of Criminal Procedure,  
22 the United States of America, by and through McGregor W. Scott,  
23 the United States Attorney for the Eastern District of  
24 California, and Assistant United States Attorney David L. Gappa,  
25 has agreed with defendant Timothy J. Myers, and his attorney,  
26 Robert W. Rainwater, as follows:  
27

28 1. Charges.

The defendant acknowledges that he has been charged in an

1 indictment with Use of a Facility of Interstate Commerce to  
2 Induce a Minor to Engage in Criminal Sexual Activity in violation  
3 of Title 18, United States Code, Section 2422(b). The defendant  
4 will plead guilty to the charge in the indictment.  
5

6  
7 2. Nature, Elements and Possible Defenses.

8 The defendant has read the charge against him contained in  
9 the indictment, and that charge has been fully explained to him  
10 by his attorney. Further, the defendant fully understands the  
11 nature and elements of the crime charged in the indictment to  
12 which he is pleading guilty, together with the possible defenses  
13 thereto, and he has discussed them with his attorney.  
14

15 The elements of the crime of Use of a Facility of Interstate  
16 Commerce to Induce a Minor to Engage in Criminal Sexual Activity,  
17 as alleged in the indictment, are as follows:

- 18 (1) The defendant used any facility or means  
19 of interstate or foreign commerce;  
20 (2) To knowingly attempt to persuade,  
21 induce, entice, or coerce;  
22 (3) An individual who had not attained the  
23 age of 18 years;  
24 (4) To engage in sexual activity for which any person  
25 could be charged with a criminal offense.

26 3. Agreements by the Defendant.

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

(b) Defendant agrees to enter a plea of guilty to the charge  
in the indictment which charges him with Use of a Facility of

1 Interstate Commerce to Induce a Minor to Engage in Criminal  
2 Sexual Activity, in violation of Title 18, United States Code,  
3 Section 2422(b).

4 (c) Defendant understands and agrees that he will not be  
5 allowed to withdraw his plea should the Court fail to follow the  
6 sentencing recommendations of the parties.  
7

8 (d) Defendant knowingly and voluntarily waives his  
9 Constitutional and statutory rights to appeal his plea,  
10 conviction, and sentence. This waiver of appeal includes, but is  
11 not limited to, an express waiver of defendant's rights to appeal  
12 his plea, conviction, and sentence on any ground, including any  
13 appeal right conferred by 18 U.S.C. § 3742. The defendant  
14 further agrees not to contest his plea, conviction, or sentence  
15 in any post-conviction proceeding, including but not limited to a  
16 proceeding under 28 U.S.C. § 2255. The defendant, however,  
17 preserves his right to directly appeal any sentence greater than  
18 the statutory minimum of five years.  
19

20 (e) The defendant further acknowledges that his plea of  
21 guilty is voluntary and that no force, threats, promises or  
22 representations have been made to anybody, nor agreement reached,  
23 other than those set forth expressly in this agreement, to induce  
24 the defendant to plead guilty.  
25

26 (f) The defendant agrees to waive all rights under the  
27 "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), to  
28 recover attorneys' fees or other litigation expenses in  
connection with the investigation and prosecution of all charges

1 in the above-captioned matter and of any related allegations  
2 (including without limitation any charges to be dismissed  
3 pursuant to this Agreement and any charges previously dismissed).

4 (g) The defendant agrees that the sentencing court may look  
5 to the United States Sentencing Commissions Guidelines for  
6 guidance when sentencing the defendant in this case  
7

8 (h) If the defendant's conviction on the count to which he  
9 is pleading is ever vacated at the defendant's request, or his  
10 sentence is ever reduced at his request, the government shall  
11 have the right (1) to prosecute the defendant on any of the  
12 counts to which he pleaded guilty; (2) to reinstate any counts  
13 that may be dismissed under this agreement; and (3) to file any  
14 new charges that would otherwise be barred by this agreement.  
15 The decision to pursue any or all of these options is solely in  
16 the discretion of the United States Attorney's Office. By  
17 signing this agreement, the defendant agrees to waive any  
18 objections, motions, and defenses he might have to the  
19 government's decision, including Double Jeopardy. In particular,  
20 he agrees not to raise any objections based on the passage of  
21 time with respect to such counts including, but not limited to,  
22 any statutes of limitation or any objections based on the Speedy  
23 Trial Act or the Speedy Trial Clause of the Sixth Amendment.  
24

25  
26 4. Agreements by the Government.

27 (a) The government will recommend a two-level reduction (if  
28 the offense level is less than 16) or a three-level reduction (if  
the offense level reaches 16) in the computation of his offense

1 level if the defendant clearly demonstrates acceptance of  
2 responsibility for his conduct as defined in Section 3E1.1 of the  
3 United States Sentencing Commission Guidelines Manual.

4 (b) The government agrees to recommend that the defendant  
5 be sentenced to imprisonment for the statutory minimum term of  
6 imprisonment of sixty (60) months.  
7

8  
9 6. Factual Basis.

10 Defendant will plead guilty because he is in fact guilty of  
11 the crime set forth in the indictment. Defendant also agrees  
12 that the following are the facts of this case, although he  
13 acknowledges that, as to other facts, the parties may disagree:  
14

15 On or about and between January 17, 2005, to and  
16 including February 8, 2005, in the Eastern District of  
17 California, and elsewhere the defendant knowingly  
18 attempted to persuade, induce, entice, or coerce an  
19 individual, who had not attained the age of 18 years,  
20 to engage in sexual activity for which any person could  
21 be charged with a criminal offense. Specifically, the  
22 defendant engaged in numerous online chat sessions with  
23 persons whom the defendant believed to be a twelve (12)  
24 year-old girl, and these chat sessions included graphic  
25 discussions of specific sexual activities in which the  
26 defendant wished to engage with the minor. Several of  
27 these sexual activities, had they actually occurred,  
28 could have resulted in the defendant's criminal  
prosecution under California law. In fact, however,  
the defendant was communicating with one or more  
persons, including law enforcement officials, who were  
acting in an undercover capacity.

25 7. Potential Sentence.

26 Defendant understands that because the count to which he is  
27 pleading guilty occurred after November 1, 1987, the court will  
28 be required to consult the Sentencing Guidelines adopted by the

1 United States Sentencing Commission. Further, he understands  
2 that the court may choose a sentence above or below the  
3 applicable guideline range depending on the aggravating or  
4 mitigating facts of the defendant's case, but the Court will not  
5 be able to impose a sentence below the statutory minimum term of  
6 five (5) years imprisonment. The following are the potential  
7 penalties that the defendant faces:  
8

9  
10 **Violation of 18 U.S.C. § 2422(b): Use of a Facility of**  
11 **Interstate Commerce to Induce a Minor to Engage in**  
12 **Criminal Sexual Activity:**

13 (a). Imprisonment.

14 Maximum: Thirty (30) years.

15 Minimum: Five (5) years.

16 (b). Fine.

17 Maximum: Two Hundred  
18 Fifty Thousand Dollars  
19 (\$250,000).

20 (c). Both such fine and imprisonment.

21 (d). Term of Supervised Release.

22 Three Years

23 (Should the defendant violate any of the terms of  
24 his supervised release, he can be returned to  
25 prison for the remaining period of supervised  
26 release actually imposed by the court, or two  
27 years whichever is less.)

28 (e). Penalty Assessment:

Mandatory: One Hundred Dollars (\$100).

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28

1           8. Waiver of Rights.

2           Defendant understands that by pleading guilty he surrenders  
3 certain rights, including the following:

4           (a) If defendant persisted in a plea of not guilty to the  
5 charges against him, he would have the right to a public and  
6 speedy trial. The trial could be either a jury trial or a trial  
7 by a judge sitting without a jury. Defendant has a right to a  
8 jury trial. But in order that the trial be conducted by a judge  
9 sitting without a jury, defendant, the government and the judge  
10 all must agree that the trial be conducted by the judge without a  
11 jury.  
12 jury.

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

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

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

13 (e) At a trial, defendant would have a privilege against  
14 self-incrimination so that he could decline to testify,  
15 and no inference of guilt could be drawn from this refusal to  
16 testify.  
17

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

23 9. Questions by Court.  
24

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



1           10. Entire Agreement.

2           This plea of guilty is freely and voluntarily made and not  
3 the result of force or threats or of promises apart from those  
4 set forth in this plea agreement. There have been no  
5 representations or promises from anyone as to what sentence this  
6 Court will impose.  
7

8  
9           11. Court not a Party.

10          It is understood by the parties that the sentencing court is  
11 neither a party to nor bound by this agreement and the sentencing  
12 judge is free to impose the maximum penalties as set forth in  
13 paragraph 6. Further, in making its sentencing decision, the  
14 Court may take into consideration any and all facts and  
15 circumstances concerning the criminal activities of defendant,  
16 including activities which may not have been charged in the  
17 indictment.  
18

19  
20          12. Presentence Report.

21          Defendant understands that the United States Probation  
22 Office is not a party to this agreement and will conduct an  
23 independent investigation of defendant's activities and his  
24 background. It will then prepare a presentence report which it  
25 will submit to the Court as its independent sentencing  
26 recommendation. In addition, the government will fully apprise  
27 the Probation Office, as well as  
28 the Court, of the full and true nature, scope and extent of the

1 defendant's criminal activities, including information on his  
2 background and criminal history.

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MCGREGOR W. SCOTT  
United States Attorney

DATED: \_\_\_\_\_ By \_\_\_\_\_  
DAVID L. GAPPA  
Assistant U.S. Attorney

DATED: \_\_\_\_\_  
TIMOTHY J. MYERS  
Defendant

DATED: \_\_\_\_\_  
ROBERT W. RAINWATER  
Attorney for Defendant