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raThe Honorable Richard A. Jones

SEP 14 2021

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.

MATTHEW GRABOWSKY,

Defendant.

NO. CR21-141RAJ

PLEA AGREEMENT

The United States of America, by and through Brian T. Moran, United States Attorney for the Western District of Washington, and Matthew P. Hampton, Assistant United States Attorney for said District, Defendant MATTHEW GRABOWSKY, and Defendant's attorneys, TIMOTHY LEARY and CHRISTOPHER BLACK, enter into the following Plea Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A), (B).

1. **Waiver of Indictment.** Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge brought by the United States Attorney in an Information.

1
2 **2. The Charge.** Defendant, having been advised of the right to have this
3 matter tried before a jury, agrees to waive that right and enters a plea of guilty to the
4 following charge contained in the Information:

5 a. Possession of Child Pornography, as charged in Count 1, in violation
6 of Title 18, United States Code, Section 2252(a)(4)(B), (b)(2).

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

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

13 a. Possession of Child Pornography, as charged in Count 1:

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

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

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

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

23 **4. The Penalties.** Defendant understands that the statutory penalties
24 applicable to the offense to which Defendant is pleading guilty are as follows:

25 a. For the offense of Possession of Child Pornography, as charged in
26 Count 1: A maximum term of imprisonment of up to 20 years, a fine of up to \$250,000, a
27 period of supervision following release from prison of not less than 5 years and up to life,
28 a mandatory special assessment of \$100, and a \$5,000.00 penalty assessment unless the

1 defendant is indigent. If a probationary sentence is imposed, the probation period can be
2 for up to five (5) years.

3 Defendant further understands that, in order to invoke the statutory sentence for
4 the offense charged in Count 1, the United States must prove beyond a reasonable doubt
5 that the offense involved a visual depiction of a prepubescent minor or a minor who had
6 not attained 12 years of age. Defendant expressly waives the right to require the United
7 States to make this proof at trial and stipulates as a part of this plea of guilty that the
8 offense involved a visual depiction of a prepubescent minor or a minor who had not
9 attained 12 years of age.

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

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

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

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

27 **5. Immigration Consequences.** Defendant recognizes that pleading guilty
28 may have consequences with respect to Defendant's immigration status if Defendant is

not a citizen of the United States. Under federal law, a broad range of crimes are grounds for removal, and some offenses make removal from the United States presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, and Defendant understands that no one, including Defendant's attorney and the Court, can predict with certainty the effect of a guilty plea on immigration status. Defendant nevertheless affirms that Defendant wants to plead guilty regardless of any immigration consequences that Defendant's guilty plea may entail, even if the consequence is Defendant's mandatory removal from the United States.

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

- a. The right to plead not guilty and to persist in a plea of not guilty;
- b. The right to a speedy and public trial before a jury of Defendant's peers;
- c. The right to the effective assistance of counsel at trial, including, if Defendant could not afford an attorney, the right to have the Court appoint one for Defendant;
- d. The right to be presumed innocent until guilt has been established beyond a reasonable doubt at trial;
- e. The right to confront and cross-examine witnesses against Defendant at trial;
- f. The right to compel or subpoena witnesses to appear on Defendant's behalf at trial;
- g. The right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and
- h. The right to appeal a finding of guilt or any pretrial rulings.

7. **United States Sentencing Guidelines.** Defendant understands and acknowledges that the Court must consider the sentencing range calculated under the United States Sentencing Guidelines and possible departures under the Sentencing

Guidelines together with the other factors set forth in Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the history and characteristics of Defendant; (3) the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the need for the sentence to protect the public from further crimes of Defendant; (6) the need to provide Defendant with educational and vocational training, medical care, or other correctional treatment in the most effective manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity among defendants involved in similar conduct who have similar records. Accordingly, Defendant understands and acknowledges that:

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

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

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

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

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

9. **Statement of Facts.** The parties agree on the following facts. Defendant admits Defendant is guilty of the charged offense:

On multiple occasions in 2017 within the Western District of Washington, MATTHEW GRABOWSKY engaged in oral and anal sexual intercourse with MV1, a

1 person under the age of 18. GRABOWSKY created visual depictions of his sexual
2 contact with MV1, thereby using MV1 to engage in sexually explicit conduct for the
3 purpose of producing visual depictions of such conduct. In August 2017,
4 GRABOWSKY knowingly and intentionally distributed these visual depictions of MV1
5 engaged in sexually explicit conduct that he produced to other individuals over the
6 internet. He also discussed his sexual contact with MV1 and other minors with those
7 same individuals.

8 In August 2018, at his home in Kent, Washington, GRABOWSKY knowingly
9 possessed the digital devices described below in Paragraph 13 that contained at least 87
10 images and 17 videos of actual minors engaged in sexually explicit conduct. These
11 include the images described below, which are representative of the types of images and
12 videos possessed by GRABOWSKY:

13 **Image 1:** This color image depicts a prepubescent male between three and six
14 years old. He is completely nude and posed with his legs up in the air and his
15 ankles tied together, exposing his genitals and anus camera.

16 **Image 2:** This color image depicts a prepubescent male between two and five
17 years old. He is completely, and an adult male is shown inserting his penis into
18 the child's anus.

19 **Image 3:** This color image depicts a prepubescent male between two and four
20 years old. The image shows another person inserting a dog's penis into the child's
21 mouth.

22 **Image 4:** This color image depicts a prepubescent female who is between three
23 and six years old. She is kneeling down underneath a dog and engaging in oral
24 sex with the dog.

25 Each of these visual depictions possessed by GRABOWSKY was produced using
26 materials that had been shipped or transported in interstate or foreign commerce.
27 GRABOWSKY routinely traded visual depictions of minors engaged in sexually explicit
28 conduct with others over the internet and chatted about the trade of these visual
depictions and the sexual abuse and rape of children and animals.

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.

10. **Acceptance of Responsibility.** At sentencing, *if* the Court concludes Defendant qualifies for a downward adjustment acceptance for acceptance of responsibility pursuant to USSG § 3E1.1(a) and Defendant's offense level is 16 or greater, the United States will make the motion necessary to permit the 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 Defendant's intention to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

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

a. There is a three-level decrease based on Defendant's acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), (b); and

b. The government will recommend a three-level downward variance based on the Defendant's willingness to undergo a psycho-sexual assessment and polygraph, and share the results as part of sentencing.

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.

12. **Restitution.** Defendant agrees that the Court can order Defendant to pay restitution to the victims of Defendant's crimes and, in exchange for the agreements by the United States contained in this plea agreement, Defendant agrees that restitution in

1 this case should not be limited to the offense of conviction. Defendant is aware that the
2 United States will present evidence supporting an order of restitution for all losses caused
3 by all of Defendant's criminal conduct known to the United States at the time of
4 Defendant's guilty plea to include those losses resulting from crimes not charged or
5 admitted by Defendant in the Statement of Facts. In exchange for the promises by the
6 United States contained in this plea agreement, Defendant agrees that Defendant will be
7 responsible for any order by the District Court requiring the payment of restitution for
8 such losses.

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

18 b. Defendant agrees to disclose all assets in which Defendant has any
19 interest or over which Defendant exercises control, directly or indirectly, including those
20 held by a spouse, nominee, or third party. Defendant agrees to cooperate fully with the
21 United States' investigation identifying all property in which Defendant has an interest
22 and with the United States' lawful efforts to enforce prompt payment of the financial
23 obligations to be imposed in connection with this prosecution. Defendant's cooperation
24 obligations are: (1) before sentencing, and no more than 30 days after executing this Plea
25 Agreement, truthfully and completely executing a Financial Disclosure Statement
26 provided by the United States Attorney's Office and signed under penalty of perjury
27 regarding Defendant's and Defendant's spouse's financial circumstances and producing
28 supporting documentation, including tax returns, as requested; (2) providing updates

with any material changes in circumstances, as described in 18 U.S.C. § 3664(k), within seven days of the event giving rise to the changed circumstances; (3) authorizing the United States Attorney's Office to obtain Defendant's credit report before sentencing; (4) providing waivers, consents or releases requested by the U.S. Attorney's Office to access records to verify the financial information; (5) authorizing the U.S. Attorney's Office to inspect and copy all financial documents and information held by the U.S. Probation Office; (6) submitting to an interview regarding Defendant's Financial Statement and supporting documents before sentencing (if requested by the United States Attorney's Office), and fully and truthfully answering questions during such interview; and (7) notifying the United States Attorney's Office before transferring any interest in property owned directly or indirectly by Defendant, including any interest held or owned in any other name, including all forms of business entities and trusts.

c. The parties acknowledge that voluntary payment of restitution prior to the adjudication of guilt is a factor the Court considers in determining whether Defendant qualifies for acceptance of responsibility pursuant to USSG § 3E1.1(a). In addition, in any event, the government will consider Defendant's cooperation regarding restitution in making its sentencing recommendation.

13. **Forfeiture of Assets.** The Defendant understands that the forfeiture of property is part of the sentence that must be imposed in this case. The Defendant agrees to forfeit to the United States immediately his right, title, and interest in all property he used to commit or to facilitate his commission of the identified offense, any proceeds of the offense, and any data files consisting of or containing visual depictions within the meaning of 18 U.S.C. § 2253(a)(1). All such property is forfeitable pursuant to Title 18, United States Code, Section 2253(a), and includes but is not limited to:

a. One Apple iPhone 8 Plus seized from MATTHEW GRABOWSKY;
and

b. One MacBook Pro Laptop seized from MATTHEW GRABOWSKY.

1 The Defendant agrees to fully assist the United States in the forfeiture of this
2 property and to take whatever steps are necessary to pass clear title to the United States,
3 including but not limited to: surrendering title and executing any documents necessary to
4 effect forfeiture; assisting in bringing any property located outside the United States
5 within the jurisdiction of the United States; and taking whatever steps are necessary to
6 ensure that property subject to forfeiture is not sold, disbursed, wasted, hidden, or
7 otherwise made unavailable for forfeiture. The Defendant agrees not to file a claim to this
8 property in any federal forfeiture proceeding, administrative or judicial, that may be or
9 has been initiated, or to otherwise contest any federal forfeiture proceeding that may be
10 or has been initiated. The Defendant also agrees he will not assist any party who may file
11 a claim to this property in any federal forfeiture proceeding.

12 The United States reserves its right to proceed against any remaining property not
13 identified in this Plea Agreement, including any property in which Defendant has any
14 interest or control, if the Defendant used that property to commit or to facilitate his
15 commission of the identified offense.

16 **14. Abandonment of Non-Contraband Data Files.** The Defendant abandons
17 any interest he may have in any non-contraband data files contained on the electronic
18 devices identified in Paragraph 13, and he consents to the federal administrative
19 disposition of those data files, including their destruction.

20 Defendant further consents to the federal administrative disposition, including the
21 destruction of the device and all data files located thereon, of a dark gray Apple iPhone
22 8+ (S/N: GHJWTOGNJCM2) seized from Matthew Grabowsky in August 2018.

23 **15. Pre-Sentence Psycho-Sexual Assessment.** Defendant will submit to a sex
24 offender evaluation/psycho-sexual assessment, which shall include polygraph testing.
25 Defendant waives any right to confidentiality and authorizes the above-described
26 provider conducting the psycho-sexual evaluation (and any subsequent treatment) to
27 supply a written report(s) to the United States Probation Office, defense counsel, and
28

1 government counsel. Such report(s) may be considered by the Court in determining the
2 appropriate sentence and conditions of supervised release.

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

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

22 Defendant agrees that any charges to be dismissed before or at the time of
23 sentencing were substantially justified in light of the evidence available to the United
24 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
25 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
26 (1997).

27 **18. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
28 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea

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

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

20 **19. Waiver of Appellate Rights and Rights to Collateral Attacks.**

21 Defendant acknowledges that, by entering the guilty plea required by this Plea
 22 Agreement, Defendant waives all rights to appeal from Defendant's conviction, and any
 23 pretrial rulings of the Court, and any rulings of the Court made prior to entry of the
 24 judgment of conviction. Defendant further agrees that, provided the Court imposes a
 25 custodial sentence that is within or below the Sentencing Guidelines range (or the
 26 statutory mandatory minimum, if greater than the Guidelines range) as determined by the
 27 Court at the time of sentencing, Defendant waives to the full extent of the law:
 28

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

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

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

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

16 20. **Voluntariness of Plea.** Defendant agrees that Defendant has entered into
17 this Plea Agreement freely and voluntarily, and that no threats or promises were made to
18 induce Defendant to enter a plea of guilty other than the promises contained in this Plea
19 Agreement or set forth on the record at the change of plea hearing in this matter.

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

22. **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 14th day of September, 2021.



MATTHEW GRABOWSKY
Defendant



TIMOTHY LEARY
CHRISTOPHER BLACK
Attorneys for Defendant

s/ Matthew P. Hampton for

GRADY J. LEUPOLD
Assistant United States Attorney

s/ Matthew P. Hampton

MATTHEW P. HAMPTON
Assistant United States Attorney