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12 Attorneys for Plaintiff
United States of America

13
14 IN THE UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,
17
Plaintiff,
18
v.
19 BRYAN CONNOR HERRELL,
20
Defendant.

CASE NO. 1:17-CR-00301-DAD-BAM
PLEA AGREEMENT
DATE:
TIME: a.m.
COURT: Hon. Dale A. Drozd

21
22 I. INTRODUCTION

23 A. Scope of Agreement

24 The indictment in this case charges the defendant with a violation of 18 U.S.C. § 1962(d)
25 (conspiracy to engage in a racketeer influenced corrupt organization). This document contains the
26 complete plea agreement between the United States Attorney's Office for the Eastern District of
27 California (the "government"), the Computer Crime and Intellectual Property Section of the U.S.
28

1 Department of Justice, Criminal Division, and the defendant regarding this case. This plea agreement is
2 limited to the United States Attorney's Office for the Eastern District of California and the U.S.
3 Department of Justice's Criminal Division and cannot bind any other federal, state, or local prosecuting,
4 administrative, or regulatory authorities.

5 **B. Court Not a Party**

6 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
7 discretion of the Court, and the Court may take into consideration any and all facts and circumstances
8 concerning the criminal activities of defendant, including activities that may not have been charged in
9 the indictment. The Court is under no obligation to accept any recommendations made by the
10 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
11 including the statutory maximum stated in this plea agreement.

12 If the Court should impose any sentence up to the maximum established by the statute, the
13 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
14 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
15 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
16 receive.

17 **II. DEFENDANT'S OBLIGATIONS**

18 **A. Guilty Plea**

19 The defendant will plead guilty to 18 U.S.C. § 1962(d) (conspiracy to engage in a racketeer
20 influenced corrupt organization). The defendant agrees that he is in fact guilty of this charge and that
21 the facts set forth in the Factual Basis For Plea attached hereto as Exhibit A are accurate.

22 The defendant agrees that this plea agreement will be filed with the Court and become a part of
23 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
24 plea should the Court not follow the government's sentencing recommendations.

25 The defendant agrees that the statements made by him in signing this Agreement, including the
26 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
27 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
28 guilty plea pursuant to this Agreement. The defendant waives any rights under Rule 11(f) of the Federal

1 Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, to the extent that these
2 rules are inconsistent with this paragraph or with this Agreement generally.

3 **B. Sentencing Recommendation**

4 The defendant and his counsel may recommend whatever sentence they deem appropriate
5 pursuant to 18 U.S.C. § 3553(a).

6 **C. Special Assessment**

7 The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering
8 a check or money order payable to the United States District Court to the United States Probation Office
9 immediately before the sentencing hearing.

10 **D. Defendant's Violation of Plea Agreement or Withdrawal of Plea**

11 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
12 his plea, this plea agreement is voidable at the option of the government. The government will no longer
13 be bound by its representations to the defendant concerning the limits on criminal prosecution and
14 sentencing as set forth herein. One way a defendant violates the plea agreement is to commit any crime
15 or provide any statement or testimony which proves to be knowingly false, misleading, or materially
16 incomplete. Any post-plea conduct by a defendant constituting obstruction of justice will also be a
17 violation of the agreement. The determination whether the defendant has violated the plea agreement
18 shall be decided under a probable cause standard.

19 If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the
20 government shall have the right: (1) to prosecute the defendant on any of the counts to which he pleaded
21 guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file
22 any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter
23 be subject to prosecution for any federal criminal violation of which the government has knowledge,
24 including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these
25 options is solely in the discretion of the United States Attorney's Office and the U.S. Department of
26 Justice's Criminal Division.

27 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
28 defenses that the defendant might have to the government's decision to exercise the options stated in the

1 previous paragraph. Any prosecutions that are not time-barred by the applicable statute of limitations as
2 of the date of this plea agreement may be commenced in accordance with this paragraph,
3 notwithstanding the expiration of the statute of limitations between the signing of this plea agreement
4 and the commencement of any such prosecutions. The defendant agrees not to raise any objections
5 based on the passage of time with respect to such counts including, but not limited to, any statutes of
6 limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth
7 Amendment to any counts that were not time-barred as of the date of this plea agreement.

8 In addition: (1) all statements made by the defendant to the government or other designated law
9 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
10 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
11 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
12 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
13 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
14 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
15 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

16 **E. Forfeiture**

17 The defendant agrees to forfeit to the United States voluntarily and immediately all of his right,
18 title, and interest to any and all assets subject to forfeiture pursuant to 18 U.S.C. §§ 1963(a)(1) - (a)(3).
19 Those assets include, but are not limited to, the following:

- 20 1. One cryptocurrency wallet containing approximately one Bitcoin,
- 21 2. An assortment of counterfeit "Magic: The Gathering" and sports collectible cards,
- 22 3. Approximately \$745.00 in U.S. Currency,
- 23 4. 139 gold coins, one ounce each,
- 24 5. 8 silver dollar coins, one ounce each,
- 25 6. One \$1,000 bill encased in hard plastic, and
- 26 7. One German August Schwer Cuckoo Clock.

27 The defendant agrees that the listed assets constitute property he acquired an interest in or
28 maintained in violation of 18 U.S.C. § 1962(d); constitute property he had an interest in, security of,
claim against, or property or contractual right of any kind affording a source of influence over any
enterprise which the defendant established, operated, controlled, conducted, or participated in the

1 conduct of, in violation of 18 U.S.C. § 1962(d); and constitutes or is derived from proceeds which the
2 defendant obtained, directly or indirectly, from racketeering activity in violation of 18 U.S.C. § 1962(d).

3 The defendant agrees to fully assist the government in the forfeiture of the listed assets and to
4 take whatever steps are necessary to pass clear title to the United States. The defendant shall not sell,
5 transfer, convey, or otherwise dispose of any of his assets, including but not limited to, the above-listed
6 assets.

7 The defendant agrees not to file a claim to any of the listed property in any civil proceeding,
8 administrative or judicial, which may be initiated. The defendant agrees to waive his right to notice of
9 any forfeiture proceeding involving this property, and agrees to not file a claim or assist others in filing a
10 claim in that forfeiture proceeding.

11 The defendant knowingly and voluntarily waives his right to a jury trial on the forfeiture of
12 assets. The defendant knowingly and voluntarily waives all constitutional, legal, and equitable defenses
13 to the forfeiture of these assets in any proceeding. The defendant agrees to waive any jeopardy defense,
14 and agrees to waive any claim or defense under the Eighth Amendment to the United States
15 Constitution, including any claim of excessive fine, to the forfeiture of the assets by the United States,
16 the State of California or its subdivisions. The defendant waives oral pronouncement of forfeiture at the
17 time of sentencing, and any defenses or defects that may pertain to the forfeiture.

18 **III. THE GOVERNMENT'S OBLIGATIONS**

19 **A. Recommendations**

20 **1. Incarceration Range**

21 The government will recommend that the defendant be sentenced to the low end of the
22 applicable guideline range for his offense, as determined by the Court. The government may
23 recommend whatever it deems appropriate as to all other aspects of sentencing.

24 **2. Acceptance of responsibility**

25 The government will recommend a three-level reduction in the computation of defendant's
26 offense level if he clearly demonstrates acceptance of responsibility for his conduct as defined in
27 U.S.S.G. § 3E1.1. This includes the defendant meeting with and assisting the probation officer in the
28 preparation of the pre-sentence report, being truthful and candid with the probation officer, and not

1 otherwise engaging in conduct that constitutes obstruction of justice within the meaning of U.S.S.G
2 § 3C1.1, either in the preparation of the pre-sentence report or during the sentencing proceeding.

3 **B. Use of Information for Sentencing**

4 The government is free to provide full and accurate information to the Court and the United
5 States Probation Office (“Probation”), including answering any inquiries made by the Court and/or
6 Probation, and rebutting any inaccurate statements or arguments by the defendant, his attorney,
7 Probation, or the Court. The defendant also understands and agrees that nothing in this Plea Agreement
8 bars the government from defending on appeal or collateral review any sentence that the Court may
9 impose.

10 **IV. ELEMENTS OF THE OFFENSE**

11 At a trial, the government would have to prove beyond a reasonable doubt the following
12 elements of the offense to which the defendant is pleading guilty, 18 U.S.C. § 1962(d) (conspiracy to
13 engage in a racketeer influenced corrupt organization):

- 14 1. The charged enterprise – the AlphaBay Organization in this case – was or would be
15 established;
- 16 2. The enterprise was or would be engaged in, or its activities affected or would affect,
17 interstate or foreign commerce;
- 18 3. The defendant knowingly agreed that a conspirator would be associated with the
19 enterprise;
- 20 4. The defendant knowingly agreed that a conspirator would conduct or participate, either
21 directly or indirectly, in the conduct of the enterprise’s affairs through a pattern of racketeering activity;
22 and
- 23 5. The defendant knowingly agreed that a conspirator would commit at least two acts of
24 racketeering activity.

25 **V. MAXIMUM SENTENCE**

26 **A. Maximum penalty**

27 The maximum sentence that the Court can impose is 20 years of incarceration, a fine of \$250,000
28 or twice the proceeds of the offense, a three-year period of supervised release, and a special assessment

1 of \$100. In addition, the defendant may be ineligible for certain federal and/or state assistance and/or
2 benefits, pursuant to 21 U.S.C. § 862. By signing this plea agreement, the defendant also agrees that
3 the Court can order the payment of restitution for the full loss caused by the defendant's wrongful
4 conduct. The defendant agrees that the restitution order is not restricted to the amounts alleged in the
5 specific count to which the defendant is pleading guilty. The defendant further agrees, as noted above,
6 that he will not attempt to discharge in any present or future bankruptcy proceeding any restitution
7 imposed by the Court.

8 **B. Violations of Supervised Release**

9 The defendant understands that if he violates a condition of supervised release at any time during
10 the term of supervised release, the Court may revoke the term of supervised release and require the
11 defendant to serve up to two years of additional imprisonment.

12 **VI. SENTENCING DETERMINATION**

13 **A. Statutory Authority**

14 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
15 must take them into account when determining a final sentence. The defendant understands that the
16 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
17 Sentencing Guidelines and must take them into account when determining a final sentence. The
18 defendant further understands that the Court will consider whether there is a basis for departure from the
19 guideline sentencing range (either above or below the guideline sentencing range) because there exists
20 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
21 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
22 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
23 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

24 **B. Guideline Calculations**

25 The government and the defendant agree that the following is their present best estimate of the
26 sentencing guidelines variables. These estimates shall not be binding on the Court, the Probation Office,
27 or the parties:
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1 agreement is insufficient to support the defendant's plea of guilty. The defendant specifically gives up
2 the right to appeal any order of restitution the Court may impose.

3 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if
4 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the
5 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant
6 understands that these circumstances occur infrequently and that in almost all cases this Agreement
7 constitutes a complete waiver of all appellate rights.

8 In addition, regardless of the sentence the defendant receives, the defendant also gives up any
9 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
10 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

11 If the defendant ever attempts to vacate his plea, dismiss the underlying charges, or modify or set
12 aside his sentence on any of the counts to which he is pleading guilty, the government shall have the
13 rights set forth in paragraph II.D (Defendant's Violation of Plea Agreement) herein.

14 **C. Waiver of Attorneys' Fees and Costs**

15 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
16 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
17 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
18 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
19 charges previously dismissed).

20 **VIII. ENTIRE PLEA AGREEMENT**

21 Other than this plea agreement, no agreement, understanding, promise, or condition between the
22 government and the defendant exists, nor will such agreement, understanding, promise, or condition
23 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
24 counsel for the United States.

25 **IX. APPROVALS AND SIGNATURES**

26 **A. Defense Counsel**

27 I have read this plea agreement and have discussed it fully with my client. The plea agreement
28 accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to

1 plead guilty as set forth in this plea agreement.

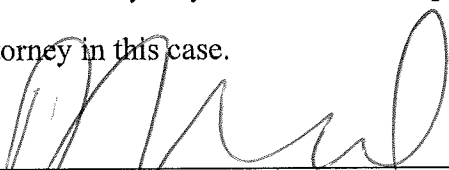
2
3 Dated: 1-2-20


JEFFREY T. HAMMERSCHMIDT
Counsel for Defendant

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5 **B. Defendant**

6 I have read this plea agreement and carefully reviewed every part of it with my attorney. I
7 understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully
8 understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my
9 case. No other promises or inducements have been made to me, other than those contained in this plea
10 agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement.
11 Finally, I am satisfied with the representation of my attorney in this case.

12
13 Dated: 1-2-20


BRYAN CONNOR HERRELL,
Defendant

14
15 **C. Attorney for the United States**


16 I accept and agree to this plea agreement on behalf of the government.
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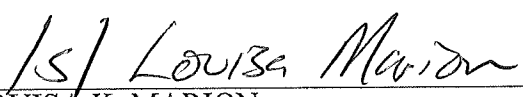
McGREGOR W. SCOTT
United States Attorney

By: 
PAUL HEMESATH
Assistant United States Attorney

Dated:

1/27/2020

BRIAN BENCZKOWSKI
Assistant Attorney General

By: 
LOUISA K. MARION
Senior Counsel
Computer Crime and Intellectual Property Section

1 Asked Questions, accessible from the home page, listed the question “Is AlphaBay Market Legal?” and
2 the response “Some people have really asked this question. Of course not. We are an anonymous
3 marketplace selling drugs, weapons and credit cards. Make sure you access the website through Tor or
4 through a VPN to ensure anonymity. We take no responsibility if you get caught, so protecting yourself
5 is your responsibility.”

6 **D. The Founding of AlphaBay**

7 Between July and December 2014, an individual using the moniker “Alpha02” (referred to as
8 CO-CONSPIRATOR-1 in the indictment) created and launched AlphaBay. According to AlphaBay’s
9 publicly posted FAQs, “AlphaBay Market . . . [was] founded by alpha02, reputable member on most
10 carding forums and experienced carders [sic].” After some time helping others on carding forums, he
11 decided to start his own marketplace and allow sellers from around the world to sell goods to buyers
12 worldwide.” Early pages of the AlphaBay site listed a “copyright” mark indicating that the site was
13 “proudly designed by Alpha02.” The site went live in December 2014.

14 **E. How to Buy Illegal Goods on AlphaBay**

15 The ordinary purchase process on AlphaBay was much like purchasing goods on any
16 e-commerce site: the buyer browsed to the vendor’s page, selected an item for purchase, and clicked the
17 purchase button. The website next verified that the user had sufficient Bitcoin (or other digital
18 currency) in his or her account for the purchase. If so, the site’s internal ledger adjusted, the buyer’s
19 account was debited the purchase price, and funds were moved (at least on AlphaBay’s internal ledger)
20 into an AlphaBay “escrow” wallet. Once the buyer confirmed that the item had been delivered or
21 service had been completed, the internal ledger was again adjusted, the vendor’s AlphaBay account was
22 credited the sales price, and the transaction was deemed completed, after which the seller could
23 withdraw his/her newly earned Bitcoin (or other digital currency) from AlphaBay into an address he/she
24 controlled using a PIN code.

25 AlphaBay and its administrator, Alpha02 profited from every transaction conducted on the
26 website. Specifically, the website imposed a commission for every transaction on the site. The
27 commission rate appeared to vary based on the seller’s history, volume, and trust level on the site.

28 **F. AlphaBay’s Organization Was an Enterprise**

AlphaBay’s day-to-day operations were run by a staff of 8 to 10 individuals, including a security
administrator, a public relations manager, and “ScamWatch” personnel (who would watch out for
“phishing” attempts and other scams targeting AlphaBay users). AlphaBay also employed a number of
“Moderators,” who reviewed and moderated disputes among vendors and buyers. The Moderators had
the ability to change users’ PIN numbers, had discretion to refund buyers’ digital currency if they
concluded the dispute required it, had visibility into staff-only discussion forums, and could view all
AlphaBay users’ digital currency balances at any moment. The Moderators included (at least): “Raspi,”
“Disc0,” “Russ0,” “Botah,” “BigMuscles,” “MountainHigh9,” and “Atlas.” Each was paid a salary
through the site for his or her work administering AlphaBay.

AlphaBay constituted an enterprise in that it was an ongoing organization in which its various
associates functioned as a continuing unit. The participants of AlphaBay, including HERRELL,
operated together in a coordinated manner in furtherance of a common purpose, that is, to gain money
through the illegal sales of drugs, stolen identities, firearms, and other items, through an anonymous

1 Internet platform known as AlphaBay, which operated on the Darkweb, and using payment systems
2 known generally as digital currencies. The participants of AlphaBay, including HERRELL, agreed that
3 they would conduct the affairs of the AlphaBay enterprise through a pattern of racketeering activity,
4 including the trafficking of narcotics, among other crimes, as described herein. The AlphaBay
5 enterprise engaged in or affected interstate or foreign commerce through causing the sale and transport
6 of illegal goods to and from the United States and various countries, including the Netherlands, the
7 United Kingdom, and Canada.

8 **G. Defendant HERRELL Was a Moderator on AlphaBay**

9 HERRELL was a well-known presence in the Darkweb using the monikers "Penissmith,"
10 "Realpenissmith," "Cooked," and "Botah," among others. Using these monikers, HERRELL engaged in
11 a number of illegal schemes on the Darkweb. Penissmith's reputation earned HERRELL a position as a
12 Moderator on AlphaBay. As a Moderator (as discussed above), HERRELL adjudicated disputes
13 between buyers and vendors on AlphaBay. As a Moderator, Penissmith/Botah was paid four bitcoins
14 per week for his assistance in administrating aspects of AlphaBay, had full visibility and awareness of
15 the criminal activities conducted on the website, and in many instances directly facilitated these criminal
16 activities through his moderation of disputes. Bitcoin was worth about \$2,000 per coin in May 2016,
17 and about \$2,600 in July of 2017.

18 **H. Defendant HERRELL Moderated Thousands of Disputes and Foresaw Hundreds of
19 Thousands More, Which Constituted Acts of Racketeering**

20 Records seized from the AlphaBay website show that, using the moniker Botah, HERRELL
21 moderated over 20,000 disputes involving illegal transactions. For example, among the recorded
22 disputes, 709 were designated in the category "meth." While some of the transactions in the "meth"
23 category identified sales for methamphetamine of one gram or less, many of the disputes involved large
24 amounts of methamphetamine. The title of one listing read as follows:

25 1000 GRAMS HIGH QUALITY CRYSTAL METHAMPHETAMINE -
26 FREE SHIPPING 50% ESCROW

27 In the "heroin" category, HERRELL moderated 888 disputes. While some of the transactions in
28 this category identified sales of heroin for one gram or less, many of the disputes involved large amounts
of heroin. The title of one listing read:

!! CHINA WHITE 500G - SYNTHETIC HEROIN !!! FREE SAMPLE
FOR NEW CUSTOMER

In the "cocaine" category, HERRELL moderated 1,705 disputes. While some of the transactions
in this category identified sales of cocaine for one gram or less, many of the disputes involved large
amounts of cocaine. The title of one listing read:

500 Grams - FISHSCALE COLOMBIAN COCAINE - DISCO SHIT!
((BEST QUALITY/PRICE ON ALPHA -ESCROW 50%)

HERRELL, acting as Botah, moderated disputes in the following additional, exemplar
categories:

Category	No. of Disputes Moderated
Fentanyl and RCs [Research Chemicals]	468
LSD	800
Steroids	400
MDMA	1,960
Buds & Flowers [marijuana]	3,451
Edibles [marijuana based]	761

During the period of time in which HERRELL was moderating disputes as Botah, the AlphaBay Marketplace facilitated the sale of hundreds of thousands of illegal transactions. The vast majority of these transactions were not moderated by HERRELL because they either: (1) did not require moderation because there was no dispute between the buyer and the vendor, or (2) any disputes were settled by another Moderator on the site. Nonetheless, all of the transactions during this period of time were foreseeable to HERRELL as a member of the enterprise.

As a member of the enterprise, HERRELL agreed that AlphaBay vendors would sell (and did sell) controlled substances, and it was foreseeable to HERRELL that these controlled substances would be in an aggregate quantity in excess of the minimum weight required to attain a base level of 38 according to U.S.S.G. § 2D1.1(a)(5) & (c)(1).

When HERRELL moderated controlled-substance disputes, he agreed to participate directly in those transactions, and in AlphaBay's continuing pattern of racketeering activity. His moderation of those disputes is also evidence that he was aware of the other drug transactions on AlphaBay (e.g., distributions of controlled substance that did not require moderation or that were moderated by someone else). Accordingly, those other transactions on AlphaBay were foreseeable to HERRELL.

I. Transactions on AlphaBay Were Interstate and International

AlphaBay was used by vendors and buyers to distribute illegal contraband throughout the United States and the world. The site imposed no limits on the state or country of origin when registering a vendor or buyer account; rather, the site was designed to facilitate interstate and international transfers of illegal goods. That is, the site's search options within each product listing category allowed buyers to search not only based on type of good and price, but also "Origin country" and "Ships to" country so users could more efficiently filter only for those goods that could be shipped to their resident country. Additionally, although all transactions on the site were conducted in digital currencies, AlphaBay's Home Page published real-time updates of the price of these digital currencies relative to numerous international currencies, including the U.S. Dollar, Canadian Dollar, Euro, Australian Dollar, and U.K. Pound Sterling.

J. Forfeiture

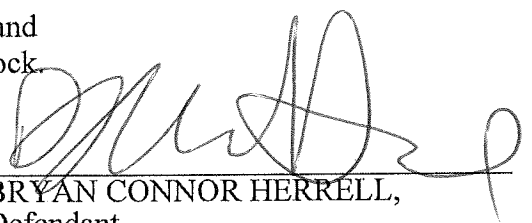
The parties agree that the following items were seized from HERRELL, and that they were purchased or otherwise derived from criminal activity described in the indictment:

1. One cryptocurrency wallet containing approximately one Bitcoin,
2. An assortment of counterfeit "Magic: The Gathering" and sports collectible cards,
3. Approximately \$745.00 in U.S. Currency,

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- 4. 139 gold coins, one ounce each,
- 5. 8 silver dollar coins, one ounce each,
- 6. One \$1,000 bill encased in hard plastic, and
- 7. One German August Schwer Cuckoo Clock.

Dated: 1-2-20


BRYAN CONNOR HERRELL,
Defendant