

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

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CRIMINAL NO. H-04-

United States Code, Section 1029(a)(5).

Cooperation

2. The United States reserves its option to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K of the United States Sentencing Guidelines Manual, or Rule 35(b) of the Federal Rules of Criminal Procedure if, in its sole discretion, it determines that such a departure is appropriate. In that regard:

- (a) Defendant agrees to testify truthfully as a witness before a grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States. Defendant further agrees to waive his/her Fifth Amendment privilege against self-incrimination for the purpose of this agreement;
- (b) Defendant agrees to voluntarily attend any interviews, conferences, or debriefings as the United States may request;
- (c) Defendant agrees to provide truthful, complete and accurate information and testimony;
- (d) Defendant agrees to provide to the United States all documents in his/her possession or under his/her control relating to all areas of inquiry and investigation;
- (e) The defendant agrees that, upon request by the United States, he will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice. The defendant stipulates to the admissibility of the results of this polygraph examination if later offered in a proceeding to determine the defendant's compliance with this plea agreement.
- (f) The defendant agrees that the incorporated Statement of Facts is limited to

information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.

(g) The defendant is hereby on notice that he may not violate any federal, state, or local criminal law while cooperating with the

specific conduct described in the criminal information or statement of facts. Defendant does not have immunity for crimes related to, but not specifically set out in the criminal information or statement of facts. Except where specifically noted, this plea agreement binds only the United States Attorney's Office for the Eastern District of Virginia, the Southern District of Texas, and attorneys within the Department of Justice Computer Crime & Intellectual Property Section, and the defendant; it does not bind any other prosecutor in any other jurisdiction.

Punishment Range

4. The maximum penalty for Title 18, United States Code, Section 1029(a)(3) is a ten-year term of imprisonment; a three-year term of supervised release; and a fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant as a result of the offense. In addition, the Court must also impose an order of restitution as mandated under Title 18, United States Code, Sections 3663, 3663A, and 3664.

5. The maximum penalty for Title 18 United States Code, Section 1029(a)(5) is a fifteen-year term of imprisonment; and a three-year term of supervised release; and a fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant as a result of the offense. In addition, the Court must also impose an order of restitution as mandated under Title 18, United States Code, Sections 3663, 3663A, and 3664.

Mandatory Special Assessment

6. Pursuant

will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00) per count of conviction. The payment will be by cashier's check or money order payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

Fine and Reimbursement

7. Defendant understands that under U.S.S.G § 5E1.2, the Court is permitted to order the defendant to pay a fine.

8. Defendant agrees that any fine or restitution imposed by the Court will be due and payable immediately, and defendant will not attempt to avoid or delay payment.

9. Defendant agrees to make complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500) prior to sentencing if he/she is requested to do so.

Imposition of Sentence

10. The defendant is aware that the defendant's sentence will be imposed in accordance with the United States Sentencing Guidelines and Policy Statements. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offenses to which the defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence and that any estimate of the sentencing range under the sentencing guidelines that the defendant may have received from the defendant's counsel, the United States, or the probation the

3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statutes of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

Rights at Trial

11. The defendant represents to the Court that he is satisfied that his attorney has rendered effective assistance. The defendant understands that by entering into this agreement, he surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

(a) If the defendant persisted in a plea of not guilty to the charges, he would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the defendant, the United States, and the judge all agree.

(b) If a jury trial is conducted, the jury would be composed of twelve laypersons selected at random. The defendant and his attorney would assist in selecting the jurors by removing prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors wit

that the defendant is presumed innocent, that it could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt, and that it was to consider each charge separately.

(c) If a trial is held by the judge without a jury, the judge would find the facts and, after hearing all the evidence and considering each count separately, determine whether or not the evidence established the defendant's guilt beyond a reasonable doubt.

(d) At a trial, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those witnesses and the defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence on his own behalf. If the witnesses for the defendant would not appear voluntarily, the defendant could require their attendance through the subpoena power of the Court.

(e) At a trial, the defendant would be required to present his witnesses and other evidence in support of his defense. The defendant would be able to confront those witnesses and the United States attorney would be able to cross-examine them. In turn, the United States would be able to present witnesses and other evidence on its own behalf. If the witnesses for the United States would not appear voluntarily, the United States could require their attendance through the subpoena power of the Court.

plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

Factual Basis for Guilty Plea

13. The Defendant agrees that he is pleading guilty because he is guilty of the charges contained in the Information. If this case were to proceed to trial, the United States could prove all of the following facts beyond a reasonable doubt:

(a) Between March 15, 2001, through on or about February 7, 2003, ZACHARY KEITH HILL, the defendant herein, was engaged in a scheme to obtain, possess, and use by fraud access devices such as credit card numbers, bank account and bank routing numbers, and Internet account usernames and passwords (the “fraudulent scheme”). It was part of said scheme that the defendant selected as victims individuals who purchased Internet services from America Online (“AOL”), an Internet Service Provider with its corporate headquarters in Dulles, Virginia. The fraudulent scheme began with a communication to the victims via AOL’s electronic mail (“e-mail”) service, sent under the false identity of an “AOL Billing Specialist.” The fraudulent e-mails informed the AOL customer that AOL had been unable to process the customer’s monthly account charge on the credit card the customer had provided to AOL. The e-mails directed the customers that if the customers wished to continue to receive services from AOL, the customers must visit a web site for which a hyperlink was provided in the e-mail. The e-mails indicated that the web site was an AOL secure billing site, but in fact it was a web page posted by defendant and his co-conspirators for the purpose of defrauding AOL customers of their credit card numbers, bank account information, AOL passwords, and other personal information.

The false AOL web site bore several AOL log

125 sets of usernames and passwords for Internet accounts.

(d) Between March 15, 2001, and February 5, 2003, ZACHARY KEITH HILL, the defendant herein, used credit card numbers obtained pursuant to the fraudulent scheme to purchase or attempt to purchase goods and services the aggregate purchase price of which was \$47,350.05.

Forfeiture of Interest in Fruits, Instrumentalities of Offenses

14. The defendant agrees to forfeit all interests in any asset that he owns or over which he exercises control, directly or indirectly, as well as any property that is traceable to, derived from, fungible with, or a substitute for property that constitutes the proceeds of his offenses. The defendant further agrees to waive all interest in any such asset in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to Federal Rules of Criminal Procedure 11(b)(1)(J), at the time his guilty plea is accepted.

Defendant's Waiver of Appeal

15. The defendant further agrees to waive all constitutional and statutory challenges in any manner (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 agrees to take steps as requested by the United States

to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding.

United States' Non-Waiver of Appeal

16. The United States reserves the right to carry out its responsibilities under guidelines sentencing. Specifically, the United States reserves the right:

(a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;

(b) to set forth or dispute sentencing factors or facts material to sentencing;

(c) to seek resolution of such factors or facts in conference with defendant's counsel and the Probation Office; and, the defendant fails to fulfill

(d) to file a pleading relating to these issues, in accordance with Section 6A1.2 of the United States Sentencing Guidelines.

Consequences for Breach of this Agreement

17. If the defendant fails in any way to fulfill completely all of his obligations under this plea agreement, the United States may seek release from any or all its obligations under this plea agreement.

18. If the defendant fails to fulfill his obligations under this plea agreement, he shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rule Tc-0.0600 Tw(sen

19. Any alleged breach of this agreement by either party shall be determined by the Court
in an appropriate

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PLEA AGREEMENT - ADDENDUM

I have fully