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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW KEYS,

Defendant.

CASE NO. 2:13-CR-82 KJM

PLEA AGREEMENT

DATE: JULY 30, 2014
TIME: 9:00 A.M.
COURT: Hon. Kimberly J. Mueller

I. INTRODUCTION

A. Scope of Agreement.

The indictment in this case charges the defendant with violation(s) of 18 U.S.C. § 371 (conspiracy) and 18 U.S.C. § 1030(a)(5)(A) and (b)(4)(B), and 2 (transmission of malicious code – aiding and abetting). This document contains the complete plea agreement between the United States Attorney’s Office for the Eastern District of California (the “government”) and the defendant regarding this case. This plea agreement is limited to the United States Attorney’s Office for the Eastern District

1 of California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory
2 authorities.

3 **B. Court Not a Party.**

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

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

15 **II. DEFENDANT'S OBLIGATIONS**

16 **A. Guilty Plea.**

17 The defendant will plead guilty to Count 2 (transmission of malicious code – aiding and
18 abetting). The defendant agrees that he is in fact guilty of these charges and that the facts set forth in the
19 Factual Basis for Plea attached hereto as Exhibit A are accurate.

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

23 The defendant agrees that the statements made by him in signing this Agreement, including the
24 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
25 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
26 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
27 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
28 Agreement generally.

1 **B. Restitution.**

2 The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of
3 certain offenses. The defendant agrees the conduct to which he is pleading guilty requires mandatory
4 restitution pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii), and agrees to pay restitution to the victim for the
5 total loss to the victim as a result of the scheme in an amount of \$17,650.40.

6
7 **C. Fine.**

8 The defendant reserves the right to argue that he is unable to pay a fine, but he agrees to pay any
9 criminal fine that the Court might order. The defendant understands that this plea agreement is voidable
10 at the option of the government if he fails to pay any court-ordered fine as required by this plea
11 agreement.

12 **D. Special Assessment.**

13 The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering
14 a check or money order payable to the United States District Court to the United States Probation Office
15 immediately before the sentencing hearing. The defendant understands that this plea agreement is
16 voidable at the option of the government if he fails to pay the assessment prior to that hearing.

17 **E. Violation of Plea Agreement by Defendant/Withdrawal of Plea(s).**

18 If the defendant, cooperating or not, violates this plea agreement in any way, withdraws his plea,
19 or tries to withdraw his plea, this plea agreement is voidable at the option of the government. The
20 government will no longer be bound by its representations to the defendant concerning the limits on
21 criminal prosecution and sentencing as set forth herein. One way a cooperating defendant violates the
22 plea agreement is to commit any crime or provide any statement or testimony which proves to be
23 knowingly false, misleading, or materially incomplete. Any post-plea conduct by a defendant
24 constituting obstruction of justice will also be a violation of the agreement. The determination whether
25 the defendant has violated the plea agreement will be under a probable cause standard.

26 If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the
27 government shall have the right (1) to prosecute the defendant on any of the counts to which he pleaded
28 guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file

1 any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter
2 be subject to prosecution for any federal criminal violation of which the government has knowledge,
3 including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these
4 options is solely in the discretion of the United States Attorney's Office.

5 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
6 defenses that the defendant might have to the government's decision. Any prosecutions that are not
7 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
8 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
9 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
10 The defendant agrees not to raise any objections based on the passage of time with respect to such
11 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
12 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
13 of the date of this plea agreement.

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

22 **F. Forfeiture.**

23 The defendant agrees to forfeit to the United States voluntarily and immediately all of his right
24 title and interest to any and all assets subject to forfeiture pursuant to 18 U.S.C. §§ 982, 1030(i). Those
25 assets are as follows:

- 26 1. One MacBook Pro, serial number W88091MYJY;
- 27 2. One Toshiba Hard Drive, serial number X83GF1CHSEM8

28 The defendant agrees that the listed assets constitutes property used to facilitate, involved in,

1 and/or traceable to a violation of 18 U.S.C. § 1030.

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

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

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

16 The defendant waives oral pronouncement of forfeiture at the time of sentencing, and any
17 defenses or defects that may pertain to the forfeiture.

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

19 **A. Dismissals.**

20 The government agrees to move, at the time of sentencing, to dismiss without prejudice the
21 remaining counts in the pending indictment. The government also agrees not to reinstate any dismissed
22 count except if this agreement is voided as set forth herein, or as provided in paragraphs II.E (Violation
23 of Plea Agreement by Defendant/Withdrawal of Plea(s)), and VII.B (Waiver of Appeal and Collateral
24 Attack) herein.

25 **B. Recommendations.**

26 **1. Incarceration Range.**

27 The government will recommend that the defendant be sentenced to a term no greater than the
28 low end of the applicable guideline range as determined by the Court.

1 2. Acceptance of Responsibility.

2 The government will recommend a two-level reduction (if the offense level is less than 16) or a
3 three-level reduction (if the offense level reaches 16) in the computation of his offense level if the
4 defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §
5 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of
6 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging
7 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the
8 preparation of the pre-sentence report or during the sentencing proceeding.

9 **IV. ELEMENTS OF THE OFFENSE**

10 At a trial, the government would have to prove beyond a reasonable doubt the following
11 elements of the offense to which the defendant is pleading guilty, aiding and abetting the transmission of
12 malicious code:

13 The Government would have to prove that someone, hereinafter referred to as “the Principal”
14 committed the crime of transmission of code to cause damage to a protected computer. To do that, the
15 Government would have to prove beyond a reasonable doubt:

16 First, that the Principal knowingly caused the transmission of a program, a code, a command, or
17 information to a computer without authorization;

18 Second, as a result of the transmission, the Principal intentionally impaired the availability of
19 data, a program, a system, or information;

20 Third, the impairment of the data, program, system, or information resulted in losses to one or
21 more persons totaling at least \$5,000 in value at any time during the period charged in the indictment for
22 that count,

23 Fourth, the computer damaged was used in interstate or foreign commerce or communication.

24 For the Defendant to be convicted as an aider and abetter, the Government would have to prove
25 beyond a reasonable doubt:

26 First, someone committed the crime of transmission of a program, a code, a command, or
27 information to a computer without authorization;

28 Second, the defendant knowingly and intentionally aided, counseled, commanded, induced or

1 procured that person to commit each element of transmission of malicious code; and

2 Third, the defendant acted before the crime was completed.

3 It is not enough that the defendant merely associated with the person committing the crime, or
4 unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of
5 the crime. The evidence must show beyond a reasonable doubt that the defendant acted with the
6 knowledge and intention of helping that person commit transmission of malicious code.

7 The defendant fully understands the nature and elements of the crimes charged in the indictment
8 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
9 his attorney.

10 **V. MAXIMUM SENTENCE**

11 **A. Maximum Penalty.**

12 The maximum sentence that the Court can impose is 10 years of incarceration, a fine of
13 \$250,000, a 3-year period of supervised release and a special assessment of \$100. By signing this plea
14 agreement, the defendant also agrees that the Court can order the payment of restitution for the full loss
15 caused by the defendant's wrongful conduct. The defendant further agrees, as noted above, that he will
16 not attempt to discharge in any present or future bankruptcy proceeding any restitution imposed by the
17 Court.

18 **B. Violations of Supervised Release.**

19 The defendant understands that if he violates a condition of supervised release at any time during
20 the term of supervised release, the Court may revoke the term of supervised release and require the
21 defendant to serve up to 2 additional years imprisonment.

22 **VI. SENTENCING DETERMINATION**

23 **A. Statutory Authority.**

24 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
25 must take them into account when determining a final sentence. The defendant understands that the
26 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
27 Sentencing Guidelines and must take them into account when determining a final sentence. The
28 defendant further understands that the Court will consider whether there is a basis for departure from the

1 guideline sentencing range (either above or below the guideline sentencing range) because there exists
2 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into
3 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further
4 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must
5 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

6 **B. Guideline Calculation.**

7 1. Agreed-upon Guidelines

8 The government and the defendant stipulate that the following guidelines apply:

- | | | | |
|----|----|--------------------------------------|-----------------------------|
| 9 | a. | Base Offense Level: | 6 |
| 10 | | U.S.S.G. § 2B1.1(a)(1) | |
| 11 | b. | Loss Adjustment: | +4 |
| 12 | | U.S.S.G. §2B1.1(b)(1)(C) | |
| 13 | c. | Adjustment for Section 1030(a)(5)(A) | +4 |
| 14 | | U.S.S.G. §2B1.1(b)(18)(A)(ii) | |
| 15 | d. | Acceptance of Responsibility: | See paragraph III.B.2 above |

16 2. Guidelines about which there is no agreement

17 The government and the defendant have separately analyzed the following guidelines and there
18 is no agreement related to their applicability:

- | | | |
|----|----|-------------------------|
| 19 | a. | U.S.S.G. § 2B1.1(b)(10) |
| 20 | b. | U.S.S.G. § 2B1.1(b)(11) |

21 3. Agreement that no other guidelines apply.

22 The parties agree that no other guidelines apply based on conduct complete as of the date of this
23 agreement.

24 4. Argument for Sentence Outside Guidelines Range

25 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
26 under 18 U.S.C. § 3553(a) and intends to request a noncustodial sentence. The government is bound by
27 paragraph III.B.1.

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VII. WAIVERS

A. Waiver of Constitutional Rights.

The defendant understands that by pleading guilty he is waiving the following constitutional rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be compelled to incriminate himself.

B. Waiver of Appeal and Collateral Attack.

The defendant understands that the law gives the defendant a right to appeal his guilty plea, conviction, and sentence. The defendant agrees as part of his plea, however, to give up the right to appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not exceed the statutory maximum for the offense to which he is pleading guilty. The defendant specifically gives up the right to appeal any order of restitution the Court may impose.

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

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

Notwithstanding the agreement in paragraph III.A above that the government will move to dismiss counts against the defendant, if the defendant ever attempts to vacate his plea(s), dismiss the underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading guilty, the government shall have the rights set forth in Section II.E herein.

C. Waiver of Attorneys' Fees and Costs.

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

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

4 **VIII. ENTIRE PLEA AGREEMENT**

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

9 **IX. APPROVALS AND SIGNATURES**

10 **A. Defense Counsel.**

11 I have read this plea agreement and have discussed it fully with my client. The plea agreement
12 accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to
13 plead guilty as set forth in this plea agreement.

14 Dated:

15 _____
TOR EKELAND
Attorney for Defendant

16 Dated:

17 _____
JAY LEIDERMAN
Attorney for Defendant

18 **B. Defendant:**

19 I have read this plea agreement and carefully reviewed every part of it with my attorney. I
20 understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully
21 understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my
22 case. No other promises or inducements have been made to me, other than those contained in this plea
23

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1 agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement.

2 Finally, I am satisfied with the representation of my attorney in this case.

3 Dated:

4 _____
MATTHEW KEYS
Defendant

6 **C. Attorneys for United States:**

7 I accept and agree to this plea agreement on behalf of the government.

8 Dated:

BENJAMIN B. WAGNER
United States Attorney

10 _____
MATTHEW D. SEGAL
Assistant United States Attorney

13 Dated:

LESLIE R. CALDWELL
Assistant Attorney General

15 _____
JAMES SILVER
Trial Attorney

EXHIBIT "A"

Factual Basis for Plea(s)

Beginning in approximately 2008, computer hackers purporting to act on behalf of a loose association known as "Anonymous" claimed responsibility for numerous computer hacking attacks targeting, entities such as the governments of Australia, Egypt, Sweden, and Tunisia; financial and consumer business such as Amazon, PayPal, MasterCard, and Visa; the Church of Scientology; and HBGary, a computer security business in Sacramento, California. "LulzSec" was a related, smaller group of like-minded hackers.

Between June 9, 2008 October 28, 2010, MATTHEW KEYS was employed as a web producer for Fox 40 television news in Sacramento, California. As Fox 40 News's web producer, KEYS controlled the Fox40 News's Twitter and Facebook accounts.

Fox 40 terminated KEYS on October 28, 2010. Shortly thereafter, KEYS changed the passwords on the Twitter and Facebook accounts and deleted approximately 6,000 followers from Fox 40's Twitter account. KEYS also used Fox 40's Twitter account to post headlines from its competition. Within four days, Fox 40 was able to regain control over its Facebook and Twitter accounts.

On December 12, 2010, KEYS sent his former supervisor at Fox 40 an email. In this email, KEYS told the Producer that he had infiltrated the group Anonymous. KEYS further stated he had access to future Anonymous operations including operations against PayPal, Amazon, the Los Angeles Times, Fox News and others. KEYS elaborated on this claim in a telephone conversation on the same day.

On or about December 14, 2010, two days after KEYS predicted that the LA Times might be a target of Anonymous, the FBI in Sacramento learned that a server belonging to Tribune Media (parent company of both the Los Angeles Times and Fox 40) was compromised and at least one headline was altered. According to an internal investigation conducted by employees of Tribune Media, the person or persons who committed the computer intrusion had utilized the Tribune Media accounts "Anon1234" and "Arseface," each of which were identified as unauthorized users on the Tribune Media server. Further, it was reported to the FBI in Sacramento that an employee of the Tribune observed in Anonymous IRC channels a user by the name of "sharpie" claiming involvement in the LA Times defacement.

According to a representative of Tribune Media with knowledge, approximately 333 man hours were spent by Tribune employees responding to the compromise of Tribune Media's server on December 14, 2010, at an estimated labor cost of \$17,650.40. This estimate did not include costs relating to hardware and/or service upgrades implemented by Tribune following the intrusion, costs relating to the stolen email list affecting Fox 40 News in Sacramento, nor ad revenue losses taken as a result of the attack.

In the spring and summer of 2011, KEYS began to write on the Internet about his online contact with hackers associated with Anonymous and LulzSec. He claimed that he had been in an online chatroom known as "InternetFeds."

As part of the FBI's investigation into a hacking attach on HBGary, agents reviewed a chatlog by a hacker known as "Kayla," in which Kayla stated to his confederates that KEYS had used the online moniker "AESCcracked" and given Kayla and others "passwords for LA times, fox40 and some others." Kayla indicated that KEYS, "had superuser on alot (sic) of media."

This claim was corroborated by an InternetFeds chatlog recovered from a computer seized in Toledo, Ohio as part of the FBI's investigation into Anonymous. The log reflects a conversation between AESCracked (KEYS), Sabu (Hector X. Monsegur), and "sharpie." This conversation happened

1 at a time when Monsegur was not acting as an FBI source. At the time of this conversation, KEYS was
2 in the State and Eastern District of California.

3 Dec 08 20:55:12 Sabu that would be nice to get access to fox. let me know if I can
4 get access. I want to see if I can get further in

5 ...
6 Dec 08 20:59:20 AESCracked i'm not a hacker.
7 Dec 08 20:59:23 AESCracked i'm an ex employee

8 ...
9 Dec 08 21:00:47 AESCracked user: anon1234
10 Dec 08 21:00:50 AESCracked pass: common2
11 Dec 08 21:01:23 AESCracked go fuck some shit up!
12 Dec 08 21:01:29 sharpie thanks very much
13 Dec 08 21:01:32 Sabu AESCracked: thank you.

14 The username and password combination granted access to the three Content Management
15 Systems controlling the content contained on the websites of Tribune's subsidiaries Fox 40, based in
16 Sacramento, California, and the Los Angeles Times, based in Los Angeles, California.

17 KEYS provided screenshots of this InternetFeds chatlog to an author who was writing a book
18 about Anonymous. She credited him in her book and stated that he had used the moniker AESCracked.
19 KEYS promoted her book on Twitter as the book that he was in.

20 KEYS moved to New Jersey to work for another media company. On October 4, 2012, FBI
21 agents executed a search warrant at KEYS's Seacacus, New Jersey residence and interviewed KEYS.
22 KEYS admitted that he was "AESCracked" and admitted that he provided the information to hackers
23 about Tribune Media, Fox 40 News, and the Los Angeles Times because he was angry with them for
24 firing him from his job with Fox 40. He further admitted that at the time he was in contact with
25 Anonymous, he was aware of their attacks on MasterCard, PayPal, and Visa and he viewed them as
26 hackers who could do significant damage in their attacks.

27 A forensic examination of KEYS's laptop computer revealed saved screenshots of his login as
28 AESCracked and his conversations with Anonymous hackers, including with sharpie. Sharpie bragged
about editing the LA Times's web page and stated that he had had a front page layout for the LA Times
for a half an hour but the system administrators had been too good. KEYS offered to help Sharpie get
back into the system, but then discovered that he, too, had been locked out of the system.