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11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE EASTERN DISTRICT OF CALIFORNIA
14

15 UNITED STATES OF AMERICA,) CASE NO.
16)
Plaintiff,)
17)
v.) **PLEA AGREEMENT**
18)
MATTHEW KEYS,)
19)
Defendant.)
20)
21)
22)

23 I.

24 INTRODUCTION

25 **A. Scope of Agreement:** The information in this case charges
26 the defendant with aiding and abetting the transmission of
27 malicious code. This document contains the complete plea
28 agreement between the United States Attorney's Office for the

1 Eastern District of California (the "government") and the
2 defendant regarding this case. This plea agreement is limited to
3 the United States Attorney's Office for the Eastern District of
4 California and cannot bind any other federal, state, or local
5 prosecuting, administrative, or regulatory authorities.

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

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

22 II.

23 DEFENDANT'S OBLIGATIONS

24 **A. Guilty Plea:** The defendant will plead guilty to aiding
25 and abetting the transmission of malicious code in violation of 18
26 U.S.C. §§ 1030(a)(5)(A) and (b)(4)(B), and 2. The defendant
27 agrees that he is in fact guilty of these charges and that the
28 facts set forth in the Factual Basis For Plea attached hereto as

1 Exhibit A are accurate.

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

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

16 **B. Waiver of Indictment:** The defendant understands that
17 under the United States Constitution he is entitled to be indicted
18 by a grand jury on the charges to which he is pleading guilty and
19 that pursuant to Fed.R.Crim.P. 7(b) he agrees to waive any and all
20 rights he has to being prosecuted by way of indictment to the
21 charges set forth in the information. The defendant agrees that
22 at a time set by the Court, he will sign a written waiver of
23 prosecution by indictment and consent to proceed by information
24 rather than by indictment.

25 **C. Restitution:** The Mandatory Victim Restitution Act
26 requires the Court to order restitution to the victims of certain
27 offenses. Defendant agrees that his conduct is governed by the
28 Mandatory Restitution Act pursuant to 18 U.S.C. §

1 3663A(c) (1) (A) (ii) and agrees to pay the full amount of
2 restitution to all victims affected by this offense, including,
3 but not limited to, the victims covered in the factual basis, and
4 other victims as a result of the defendant's conduct for the
5 offenses charged from the periods of October 20, 2010 through
6 January 2011. The amount of restitution will be no less than
7 \$17,650.40 plus whatever KTXL Fox 40 is able to quantify as its
8 loss resulting from the conduct described in Attachment A.

9 Defendant further agrees that he will not seek to discharge
10 any restitution obligation or any part of such obligation in any
11 bankruptcy proceeding.

12 Payment of restitution shall be by cashier's or certified
13 check made payable to the Clerk of the Court.

14 **C. Fine:** The defendant reserves the right to argue
15 inability to pay, but agrees to pay whatever criminal fine the
16 Court might order.

17 **D. Special Assessment:** The defendant agrees to pay a
18 special assessment of \$100 at the time of sentencing by delivering
19 a check or money order payable to the United States District Court
20 to the United States Probation Office immediately before the
21 sentencing hearing. The defendant understands that this plea
22 agreement is voidable at the option of the government if xxx fails
23 to pay the assessment prior to that hearing.

24 **E. Violation of Plea Agreement by Defendant/Withdrawal of**
25 **Plea:**

26 If the defendant, cooperating or not, violates this plea
27 agreement in any way, withdraws his plea, or tries to withdraw his
28 plea, this plea agreement is voidable at the option of the

1 government. The government will no longer be bound by its
2 representations to the defendant concerning the limits on criminal
3 prosecution and sentencing as set forth herein. One way a
4 cooperating defendant violates the plea agreement is to commit any
5 crime or provide any statement or testimony which proves to be
6 knowingly false, misleading, or materially incomplete. Any post-
7 plea conduct by a defendant constituting obstruction of justice
8 will also be a violation of the agreement. The determination
9 whether the defendant has violated the plea agreement will be
10 under a probable cause standard.

11 If the defendant violates the plea agreement, withdraws his
12 plea, or tries to withdraw his plea, the government shall have the
13 right (1) to prosecute the defendant on any of the counts to which
14 he/she pleaded guilty; (2) to reinstate any counts that may be
15 dismissed pursuant to this plea agreement; and (3) to file any new
16 charges that would otherwise be barred by this plea agreement.
17 The defendant shall thereafter be subject to prosecution for any
18 federal criminal violation of which the government has knowledge,
19 including perjury, false statements, and obstruction of justice.
20 The decision to pursue any or all of these options is solely in
21 the discretion of the United States Attorney's Office.

22 By signing this plea agreement, the defendant agrees to waive
23 any objections, motions, and defenses that the defendant might
24 have to the government's decision. Any prosecutions that are not
25 time-barred by the applicable statute of limitations as of the
26 date of this plea agreement may be commenced in accordance with
27 this paragraph, notwithstanding the expiration of the statute of
28 limitations between the signing of this plea agreement and the

1 commencement of any such prosecutions. The defendant agrees not
2 to raise any objections based on the passage of time with respect
3 to such counts including, but not limited to, any statutes of
4 limitation or any objections based on the Speedy Trial Act or the
5 Speedy Trial Clause of the Sixth Amendment to any counts that were
6 not time-barred as of the date of this plea agreement.

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

20 **F. Forfeiture:** The defendant agrees to abandon all of his
21 right title and interest to the FBI in an abandonment or
22 forfeiture proceeding to the following listed items seized from
23 his residence:

24 One MacBook Pro, Serial No. W880941MYJY, and power cable

25 One Toshiba hard drive, Serial No. zomcs367skm5, and cable

26 One Toshiba hard drive, Serial No. x83gfichsem8, and cable

27 The defendant agrees not to file a claim to any of the listed
28 property in any civil proceeding, administrative or judicial,

1 which may be initiated. The defendant agrees to waive his right
2 to notice of any abandonment or forfeiture proceeding involving
3 this property, and agrees to not file a claim or assist others in
4 filing a claim in that abandonment or forfeiture proceeding.

5 **III.**

6 **THE GOVERNMENT'S OBLIGATIONS**

7 **A. Dismissals:** The government agrees not to charge the
8 defendant with any more crimes that are both complete as of the
9 date of this agreement and based on the facts set forth in Exhibit
10 A.

11 **B. Recommendations:**

12 **1. Incarceration Range:** The government will recommend
13 that the defendant be sentenced to a term no longer than the low
14 end of the applicable guideline range for the offense as
15 determined by the Court.

16 **2. Acceptance of Responsibility:** The government will
17 recommend a two-level reduction (if the offense level is less than
18 16) or a three-level reduction (if the offense level reaches 16)
19 in the computation of his offense level if the defendant clearly
20 demonstrates acceptance of responsibility for his conduct as
21 defined in U.S.S.G. § 3E1.1. This includes the defendant meeting
22 with and assisting the probation officer in the preparation of the
23 pre-sentence report, being truthful and candid with the probation
24 officer, and not otherwise engaging in conduct that constitutes
25 obstruction of justice within the meaning of U.S.S.G § 3C1.1,
26 either in the preparation of the pre-sentence report or during the
27 sentencing proceeding.

28 **IV.**

1 **ELEMENTS OF THE OFFENSE**

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

6 The Government would have to prove that someone, hereinafter
7 referred to as "the Principal" committed the crime of transmission
8 of code to cause damage to a protected computer. To do that, the
9 Government would have to prove beyond a reasonable doubt:

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

13 Second, as a result of the transmission, the Principal
14 intentionally impaired the availability of data, a program, a
15 system, or information;

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

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

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

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

27 Second, the defendant knowingly and intentionally aided,
28 counseled, commanded, induced or procured that person to commit

1 each element of transmission of malicious code; and

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

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

13 **V.**

14 **MAXIMUM SENTENCE**

15 **A. Maximum Penalty:** For each count to which the defendant is
16 pleading guilty, the maximum sentence that the Court can impose is
17 10 years of incarceration, a fine of \$250,000, a 3-year period of
18 supervised release and a special assessment of \$100. By signing
19 this Plea Agreement, the defendant also agrees that the Court can
20 order the payment of restitution for the full loss caused by the
21 defendant's wrongful conduct. The defendant agrees that the
22 restitution order is not restricted to the amounts alleged in the
23 specific counts to which the defendant is pleading guilty. The
24 defendant further agrees that he will not attempt to discharge in
25 any present or future bankruptcy proceeding any restitution
26 imposed by the Court.

27 **B. Violations of Supervised Release:** The defendant
28 understands that if he violates a condition of supervised release

1 at any time during the term of supervised release, the Court may
2 revoke the term of supervised release and require the defendant to
3 serve up to 2 additional years imprisonment.

4 **VI.**

5 **SENTENCING DETERMINATION**

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

21 **B. Estimated Guideline Calculation:** The government and the
22 defendant agree that the following is their present best estimate
23 of the sentencing guidelines variables. These estimates shall not
24 be binding on the Court, the Probation Office, or the parties:

- | | | |
|----|-------------------------------|----|
| 25 | 1. Base Offense Level: | 6 |
| 26 | U.S.S.G. §2B1.1(a)(1) | |
| 27 | 2. Loss Enhancement: | +4 |
| 28 | U.S.S.G. §2B1.1(b)(1)(C) | |

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

8 In addition, regardless of the sentence the defendant
9 receives, the defendant also gives up any right to bring a
10 collateral attack, including a motion under 28 U.S.C. § 2255 or
11 § 2241, challenging any aspect of the guilty plea, conviction, or
12 sentence, except for non-waivable claims.

13 Notwithstanding the non-prosecution agreement in Paragraph
14 III A above, if the defendant ever attempts to vacate his
15 conviction or his plea, dismiss the underlying charges, or modify
16 or set aside his sentence on any of the counts to which the
17 defendant is pleading guilty, the government shall have the rights
18 set forth in Section II E herein.

19 **C. Waiver of Attorneys' Fees and Costs:** The defendant
20 agrees to waive all rights under the "Hyde Amendment," Section
21 617, P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or
22 other litigation expenses in connection with the investigation and
23 prosecution of all charges in the above-captioned matter and of
24 any related allegations (including without limitation any charges
25 to be dismissed pursuant to this plea agreement and any charges
26 previously dismissed).

27 **VIII.**

28 **ENTIRE PLEA AGREEMENT**

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

7 **IX.**

8 **APPROVALS AND SIGNATURES**

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

15 DATED:

16 MARK REICHEL
17 Attorney for Defendant

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

25 //
26 //
27 //
28 //

1 threatened or forced me in any way to enter into this plea
2 agreement. Finally, I am satisfied with the representation of my
3 attorney in this case.

4
5 DATED:

MATTHEW KEYS, Defendant

6 **C. Attorney for United States:** I accept and agree to this
7 plea agreement on behalf of the government.
8

9
10 DATED:

BENJAMIN B. WAGNER
United States Attorney

11
12 By:

MATTHEW D. SEGAL
Assistant U.S. Attorney

13
14
15 DATED:

LANNY A. BREUER
AAG, Criminal Division

16
17 By:

JAMES A. SILVER
Assistant U.S. Attorney

1 **EXHIBIT "A"**

2 **Factual Basis for Plea**

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

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

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

21 On December 12, 2010, KEYS sent his former supervisor at Fox
22 40 an e-mail. In this e-mail, KEYS told the Producer that he had
23 infiltrated the group Anonymous. KEYS further stated he had
24 access to future Anonymous operations including operations against
25 PayPal, Amazon, the Los Angeles Times, Fox News and others. KEYS
26 elaborated on this claim in a telephone conversation on the same
27 day.

28 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 e-mail list affecting Fox 40 News in
Sacramento, nor ad revenue losses taken as a result of the attack.

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

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

11 This claim was corroborated by an InternetFeds chatlog
12 recovered from a computer seized in Toledo, Ohio as part of the
13 FBI's investigation into Anonymous. The log reflects a
14 conversation between AESCracked (KEYS), Sabu (Hector X. Monsegur),
15 and "sharpie." This conversation happened at a time when Monsegur
16 was not acting as an FBI source. At the time of this
17 conversation, KEYS was in the State and Eastern District of
18 California.

```
19 Dec 08 20:55:12 Sabu that would be nice to get access  
20 to fox. let me know if I can get  
21 access. I want to see if I can  
22 get further in  
23 ...  
24 Dec 08 20:59:20 AESCracked i'm not a hacker.  
25 Dec 08 20:59:23 AESCracked i'm an ex-employee  
26 ...  
27 Dec 08 21:00:47 AESCracked user: anon1234  
28 Dec 08 21:00:50 AESCracked pass: common2  
29 Dec 08 21:01:23 AESCracked go fuck some shit up!  
30 Dec 08 21:01:29 sharpie thanks very much  
31 Dec 08 21:01:32 Sabu AESCracked: thank you.
```

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

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

41 KEYS moved to New Jersey to work for another media company.
42 On October 4, 2012, FBI agents executed a search warrant at KEYS's
43 Seacacus, New Jersey residence and interviewed KEYS. KEYS
44 admitted that he was "AESCracked" and admitted that he provided
45 the information to hackers about Tribune Media, Fox 40 News, and
46 the Los Angeles Times because he was angry with them for firing
47 him from his job with Fox 40. He further admitted that at the
48 time he was in contact with Anonymous, he was aware of their
49 attacks on MasterCard, PayPal, and Visa and he viewed them as

1 hackers who could do significant damage in their attacks.

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

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