

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA §
 §
 § CRIMINAL NO. H-04-
 §
 §
ZACHARY KEITH HILL §

PLEA AGREEMENT

The United States of America, by and through Todd M. Hinnen, Trial Attorney for the United States Department of Justice Computer Crime & Intellectual Property Section, has entered into an agreement pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure with the defendant, ZACHARY KEITH HILL, and the defendant’s counsel, Victor Blaine, Esq. The terms and conditions of the agreement are as follows:

The Defendant’s Agreement

1. The defendant, Zachary Keith Hill, agrees to waive indictment and plead guilty to a two-count criminal information filed in the Eastern District of Virginia, the jurisdiction in which the conduct described herein was investigated.

(a) Count One charges the defendant with possession of 15 or more unauthorized access devices stored on his personal computer and in two electronic mail (“e-mail”) accounts to which he had access and over which he had control, in violation of Title 18, United States Code, Section 1029(a)(3).

(b) Count Two charges the defendant with effecting transactions with one or more access devices issued to another person to receive during a one-year period things of value, the aggregate value of which exceeds \$1,000 in violation of Title 18,

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 United States, and that the United States will, in its discretion, consider any such violation in evaluating whether a downward departure is appropriate.

(h) Nothing in this agreement places any obligation on the United States to seek the defendant's cooperation or assistance.

The United States' Agreements

3. The United States agrees to each of the following:

(a) At the time of sentencing, the United States agrees not to oppose defendant's anticipated request to the Court and the United States Probation Office that he/she receive a downward adjustment of his/her offense level for acceptance of responsibility as contemplated in U.S.S.G. Section 3E1.1(a);

(b) If the United States determines the defendant has provided substantial assistance to the Government as contemplated by Section 5K1.1 of the Sentence Guidelines, the United States agrees not to oppose the defendant's request for an additional one level departure based on the timeliness of the plea or the expeditious manner in which the defendant provided complete information regarding his/her role in the offense;

(c) The United States agrees that it will not further criminally prosecute the defendant in the Eastern District of Virginia or the Southern District of Texas for 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 to Title 18 U.S.C. § 3013(a)(2)(A), immediately after sentencing, defendant

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 office is a prediction, not a promise, and is not binding on the United States, the probation office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence imposed. The defendant is aware that Title 18, United States Code, Section

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 without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed

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 could rely on a privilege against self-incrimination to decline to testify, and no inference of guilt could be drawn from the refusal to testify. If the defendant desired to do so, he could testify on his own behalf.

Lack of Conditions

12. This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This

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 logos, links to other AOL pages, and an AOL copyright seal. When the subscriber clicked “submit” after inputting the requested information into the false AOL web site, the information was sent to one or more e-mail accounts which the defendant would then access to obtain the victims’ credit card numbers, bank account information, AOL passwords, and other personal information.

(b) In furtherance of the fraudulent scheme, ZACHARY KEITH HILL, the defendant herein, possessed the means to access and control, and did access and control, two e-mail accounts: budoner@accountant.com and budoner@cheerul.com. Between July 1, 2002, and May 7, 2003, the defendant accessed these e-mail accounts and retrieved e-mails containing credit card numbers, bank account numbers and bank routing numbers, and Internet account usernames and passwords sent to the accounts pursuant to the fraudulent scheme. During this period, the e-mail accounts received e-mails sent from the false AOL web site containing a total of 405 distinct credit card numbers, 112 submissions of personal banking information such as bank account numbers and bank routing numbers, and 416 sets of usernames and passwords for Internet accounts.

(c) In addition to the credit card numbers, bank account information, and Internet account usernames and passwords possessed by defendant in the two electronic mail accounts described above, on February 11, 2003, ZACHARY KEITH HILL, defendant herein, possessed on his personal computer a total of 66 distinct credit card numbers, 40 distinct sets of bank account numbers and bank routing numbers, and

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,
- (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 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that his statements pursuant to this agreement or any leads derived therefrom, should be suppressed or are inadmissible.

19. Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the United States' decision whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the United States Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the United States' sole discretion.

20. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

Complete Agreement

21. This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement. The defendant acknowledges that no threats have been made against him and that he pleads guilty freely and voluntarily because he is guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Filed at Houston, Texas, on _____, 2003.

Todd M. Hinnen
Trial Attorney
United States Department of Justice
(202) 305-7747

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	
	§	
v.	§	CRIMINAL NO. H-04-
	§	
ZACHARY KEITH HILL	§	

PLEA AGREEMENT - ADDENDUM

I have fully explained to defendant his/her rights with respect to the pending indictment. I have reviewed the provisions of the United States Sentencing Commission’s Guidelines Manual and I have fully and carefully explained to defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with defendant. To my knowledge, defendant’s decision to enter into this agreement is an informed and voluntary one.

Victor Blaine Attorney for Defendant	Date
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I have consulted with my attorney and fully understand all my rights with respect to the indictment pending against me. My attorney has fully explained and I understand all my rights with respect to the provisions of the United States Sentencing Commission’s Guidelines Manual which may apply in my case. I have read and carefully reviewed every part of this plea agreement with my attorney. I understand this agreement and I voluntarily agree to its terms.

Zachary Keith Hill Defendant	Date
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