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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION  
12

13 UNITED STATES OF AMERICA,	)	No. CR 05-00091-JF
14 Plaintiff,	)	
15 v.	)	PLEA AGREEMENT
16 ROMAN MEYDBRAY,	)	
17 Defendant.	)	
18	)	

19 I, Roman Meydbray, and the United States Attorney's Office for the Northern District of  
20 California (hereafter "the government") enter into this written plea agreement (the "Agreement")  
21 pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

22 The Defendant's Promises

23 1. I agree to plead guilty to Counts Two and Four of the captioned indictment charging  
24 me with Unlawful Access to Stored Communications, in violation of 18 U.S.C. §§ 2701(a)(1),  
25 2701(b)(1); and Unauthorized Access into a Computer Recklessly Causing Damage, in violation of  
26 18 U.S.C. §§ 1030(a)(5)(A)(ii), 1030(a)(5)(B)(i), 1030(b) & 1030(c)(4)(B), respectively.

27 I agree that the elements of Unlawful Access to Stored Communications, as alleged in Count  
28 Two, are that: (1) I intentionally accessed without authorization, or exceeded authorization; (2) A

1 facility through which an electronic communication service is provided; (3) I obtained, altered, or  
2 prevented authorized access to a wire or electronic communication; (4) The communication was in  
3 electronic storage in such system; and (5) The offense was committed in furtherance of any criminal  
4 or tortious act in violation of the Constitution or laws of the United States or any State (including  
5 Unauthorized Access into a Computer Recklessly Causing Damage).

6 I agree that the elements of Unauthorized Access into a Computer Recklessly Causing  
7 Damage, as alleged in Count Four, are that: (1) I intentionally accessed a computer without  
8 authorization; (2) As a result of that access, I recklessly caused the impairment of the integrity, or  
9 availability of data, a program, a system, or information; (3) The impairment resulted in losses to one  
10 or more individuals totaling at least \$5,000 in value at any time during a one-year period; and (4) The  
11 computer damaged was used in interstate or foreign commerce or communication. I am further  
12 aware that the maximum penalties for each of these offenses are as follows:

- |    |    |                                 |  |
|----|----|---------------------------------|--|
| 13 | a. | Maximum prison sentence         | 5 years  |
| 14 | b. | Maximum fine                    | \$250,000 or twice the gross<br>gain or loss whichever is<br>greater |
| 15 |    |                                 |  |
| 16 | c. | Maximum supervised release term | 3 years  |
| 17 | d. | Mandatory special assessment    | \$100  |
| 18 | e. | Restitution                     | As ordered by the Court  |

19 2. I agree that I am guilty of the offense to which I will plead guilty, and I agree that  
20 the following facts are true:

21 From November 2001 to November 7, 2003, I was employed at Creative Explosions, Inc.  
22 (“Creative Explosions”), a software development company based in Scotts Valley, California.  
23 Originally, I served as an Information Technology Manager and then as the Network Manager. In  
24 these positions, I had administrative level access to, and familiarity with, Creative Explosions’  
25 computer network.

26 Between November 12, 2003 and November 17, 2003, I intentionally accessed a computer  
27 system used by my former employer, Creative Explosions, Inc., without authorization. Using a  
28 computer from my San Jose residence after my termination, I deleted the cestream.com domain for

1 the mail server, accessed the e-mail account belonging to the President of Creative Explosions and  
2 made configuration changes to the mail servers that caused e-mails to be rejected. Records from an  
3 Internet Service Provider show that an IP address assigned to me was used during my unauthorized  
4 intrusion. During a search warrant, my desktop computer was seized. A preliminary examination  
5 of this computer also reflected my unauthorized access to the e-mail of the CEO of Creative  
6 Explosions and deletion of the Cestream domain. As a result of that conduct, I recklessly caused  
7 damage and that damage caused a loss aggregating at least \$10,000 in value during a one year period  
8 to Creative Explosions. The Creative Explosions computer system which I accessed without  
9 authorization was used in interstate and foreign commerce and communication, including to conduct  
10 business transactions with individuals and businesses from around the country.

11 On Count Two, company logs confirm that my IP address was used for my unauthorized  
12 access to an e-mail of the president on November 17, 2003 at 9:28 a.m. The Creative Explosion logs  
13 confirm the unauthorized access to this unopened e-mail of the president, which had not yet been  
14 read by the president. This violation was committed in furtherance of Unauthorized Access into a  
15 Computer Recklessly Causing Damage, as I was trying to find out about pending personnel matters.

16 On January 22, 2004, in a voluntary interview with two FBI agents, I admitted changing the  
17 passwords on Creative Explosions e-mail accounts; changing permissions on the ssh folder; deleting  
18 the cestream domain for the mail server; reading the CEO's e-mail to find out what was going on  
19 concerning the company's response to the intrusion; and changing configuration settings on the  
20 Merak mail server. In a voluntary written statement, I admitted that "I read [the president]'s e-mail  
21 to find out what's going on" during my intrusion into Creative Explosions.

22 3. I agree to give up all rights that I would have if I chose to proceed to trial, including  
23 the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government  
24 witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth  
25 Amendment claims; to any further discovery from the government and to future DNA testing of  
26 physical evidence in the government's possession; and to pursue any affirmative defenses and  
27 present evidence.

28 4. I agree to give up my right to appeal my conviction, the judgment, and any orders of

1 the Court. I also agree to waive any right I may have to appeal my sentence, except in the event the  
2 Court determines that the applicable offense level under the U.S. Sentencing Guidelines is greater  
3 than offense level 10.

4 5. I agree not to file any collateral attack on my conviction or sentence, including a  
5 petition under 28 U.S.C. § 2255, at any time in the future after I am sentenced, except for a claim  
6 that my constitutional right to the effective assistance of counsel was violated.

7 6. I agree not to ask the Court to withdraw my guilty pleas at any time after it is entered.

8 7. I agree that the Court will calculate my sentencing range under the Sentencing  
9 Guidelines. I understand that the Court, while not bound to apply the Guidelines, must consult those  
10 Guidelines and take them into account when sentencing. I agree that regardless of the sentence that  
11 the Court imposes on me, I will not be entitled, nor will I ask, to withdraw my guilty pleas. I also  
12 agree that the Sentencing Guidelines range will be calculated as follows and that I will not ask for  
13 any other adjustment to or reduction in the offense level or for a downward departure from the  
14 Guidelines range, except as provided in paragraph 7(e) below:

15 a. Base Offense Level, U.S.S.G. § 2B1.1(a)(2): 6

16 b. Amount of loss, or intended loss,  
17 U.S.S.G. § 2B1.1(b)(1)(G)  
(more than \$10,000 but less than \$30,000): +4

18 c. Acceptance of responsibility: \_\_\_\_\_  
19 (If I meet the requirements of  
U.S.S.G. § 3E1.1) -2

20 d. Role in the Offense: I understand and agree that the government reserves  
21 its right to seek to increase my offense level by two levels for abuse of position of trust or use of a  
22 special skill under U.S.S.G. § 3B1.3, and that I will oppose the application of this enhancement.

23 e. Downward Departure Motion: I reserve the right to file a motion for a  
24 downward departure from the Guidelines imprisonment range determined by the Court, and I  
25 understand that the government reserves its right to oppose any such motion. The basis for the  
26 downward departure shall be limited to U.S.S.G. §§ 5K2.11 (lesser harms), 5K2.13 (diminished  
27 capacity), 5K2.20 (aberrant behavior), and 5K2.0 (combination of these factors). I agree that,  
28 regardless of any other provision in this agreement, the government may and will provide to the

1 Court and the Probation Office all information relevant to the charged offenses or the sentencing  
2 decision. I also agree that the Court is not bound by the Sentencing Guidelines calculations above,  
3 the Court may conclude that a higher guideline range applies to me, and, if it does, I will not be  
4 entitled, nor will I ask, to withdraw my guilty pleas.

5 I agree that a sentence within the applicable Guideline range is reasonable. I agree that,  
6 regardless of any other provision in this Agreement, the government may and will provide to the  
7 Court and the Probation Office all information relevant to the charged offenses or the sentencing  
8 decision. I also agree that the Court is not bound by the Sentencing Guidelines calculations above,  
9 the Court may conclude that a higher guideline range applies to me, and, if it does, I will not be  
10 entitled, nor will I ask, to withdraw my guilty plea.

11 8. In return for the government's promises set out below, I agree to pay restitution  
12 for all the losses caused by all the schemes or offenses with which I was charged in this case, and  
13 I agree that the amount of restitution, if ordered, will not be limited to the loss attributable to the  
14 counts to which I am pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). I agree that I will make  
15 a good faith effort to pay any fine, forfeiture or restitution I am ordered to pay. Before or after  
16 sentencing, I will, upon request of the Court, the government, or the U.S. Probation Office, provide  
17 accurate and complete financial information, submit sworn statements and give depositions under  
18 oath concerning my assets and my ability to pay, surrender assets I obtained as a result of my crimes,  
19 and release funds and property under my control in order to pay any fine, forfeiture, or restitution.  
20 I agree to pay the special assessment at the time of sentencing.

21 9. I agree not to commit or attempt to commit any crimes before sentence is imposed  
22 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release  
23 (if any); intentionally provide false information to the Court, the Probation Office, Pretrial Services,  
24 or the government; or fail to comply with any of the other promises I have made in this Agreement.  
25 I agree not to have any contact with any victims or any witnesses presently employed by the victim  
26 company in this case, either directly or indirectly, before and after I am sentenced. This includes,  
27 but is not limited to, personal contact; telephone, mail, or electronic mail contact; or any other  
28 written form of communication; and includes any harassing, annoying, or intimidating conduct by

1 me directed to any victims or witnesses. I agree that the Court should include this agreement as a  
2 condition of my supervised release term. I agree that, if I fail to comply with any promises I have  
3 made in this Agreement, then the government will be released from all of its promises in this  
4 agreement, including those set forth in paragraphs 13 through 15 below, but I will not be released  
5 from my guilty plea.

6 10. I agree that this Agreement contains all of the promises and agreements between  
7 the government and me, and I will not claim otherwise in the future.

8 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern  
9 District of California only, and does not bind any other federal, state, or local agency.

10 The Government's Promises

11 12. The government agrees to move to dismiss any open charges pending against the  
12 defendant in the captioned indictment at the time of sentencing.

13 13. The government agrees not to file or seek any additional charges against the  
14 defendant that could be filed as a result of the investigation that led to the captioned indictment.

15 14. The government agrees to recommend the Guidelines calculations set out above;  
16 if the offense level is ten or more, the government will recommend the low end of the applicable  
17 Sentencing Guideline range.

18 The Defendant's Affirmations:

19 15. I confirm that I have had adequate time to discuss this case, the evidence, and this  
20 Agreement with my attorney, and that he has provided me with all the legal advice that I requested.

21 16. I confirm that while I considered signing this Agreement, and at the time I signed  
22 it, I was not under the influence of any alcohol, drug, or medicine.

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17. I confirm that my decision to enter a guilty plea is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this Agreement.

Dated: June \_\_, 2005

\_\_\_\_\_  
ROMAN MEYDBRAY  
Defendant

\_\_\_\_\_

KEVIN V. RYAN  
United States Attorney

Dated: June \_\_, 2005

\_\_\_\_\_  
MARK L. KROTOSKI  
Assistant United States Attorney

I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead guilty is knowing and voluntary.

Dated: June \_\_, 2005

\_\_\_\_\_  
THOMAS J. NOLAN  
Attorney for Defendant