

1 MELINDA HAAG (CABN 132612)
United States Attorney

2 MIRANDA KANE (CABN 150630)
3 Chief, Criminal Division

4 MICHELLE J. KANE (CABN 210579)
Assistant United States Attorney

5 1301 Clay Street, Suite 340S
6 Oakland, CA 94612
7 Telephone: (510) 637-3680
8 Fax: (510) 637-3724
E-Mail: michelle.kane3@usdoj.gov

9 Attorneys for Plaintiff

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

13 UNITED STATES OF AMERICA,)
14 Plaintiff,)
15 v.)
16 GREGORY ALEXANDER,)
17 Defendant.)
18

No. 09-00719 EMC
PLEA AGREEMENT

19
20 I, Gregory Alexander, and the United States Attorney’s Office for the Northern District of
21 California (hereafter “the government”) enter into this written plea agreement (the “Agreement”)
22 pursuant to Rule 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

23 The Defendant’s Promises

24 1. I agree to plead guilty to Count One of the captioned Superseding Information
25 charging me with unlawful access to stored communications, in violation of 18 U.S.C. §
26 2701(a)(1). I agree that the elements of the offense are as follows: (1) I intentionally accessed a
27 facility that provided an electronic communication service without authorization or exceeded

28 PLEA AGREEMENT
CR 09-00719 EMC

1 authorized access to the facility; (2) in doing so I obtained, altered, or prevented authorized
2 access to a communication in electronic storage. I agree that the maximum penalties are as
3 follows:

- 4 a. Maximum prison term One year
- 5 b. Maximum fine \$100,000
- 6 c. Maximum supervised release term One year
- 7 d. Restitution As ordered by the Court
- 8 e. Mandatory special assessment \$25

9 2. I agree that I am guilty of the offense to which I am pleading guilty, and I agree
10 that the following facts are true: Beginning no later than November 26, 2007, and continuing
11 through at least June 24, 2008, I intentionally accessed the Yahoo! e-mail account of Randall
12 Hough, randallhough@yahoo.com. In doing so, I read e-mail messages, including unopened
13 messages, in Hough's account. Hough did not authorize me to access his e-mail account.

14 I am aware that the Yahoo! computer servers on which Hough's e-mail account was
15 maintained were located in the Northern District of California and I agree that they were a facility
16 through which an electronic communication service was provided, as defined in 18 U.S.C. §
17 2510(15). I also agree that the messages in Hough's account were in electronic storage at the
18 time that I accessed them, as defined in 18 U.S.C. § 2510(17)(A).

19 Prior to November 2007, I had volunteered to maintain and moderate the online forum
20 ~~www.chessdiscussion.com~~ collegechess.org *MC EMC JA* As part of my duties with the forum, I was able to see the user
21 names and passwords that participants used to access the forum. Hough was a member of the
22 forum and I used the login information for his forum account to obtain unauthorized access to his
23 e-mail account.

24 During the time that I repeatedly accessed his personal e-mail account, Hough was a member
25 of the United States Chess Federation's Board of Directors. By gaining access to Hough's e-mail
26 account, I was able to obtain confidential information related to a United States Chess Federation
27 internal investigation. I forwarded some of that information to other individuals who were

28
PLEA AGREEMENT
CR 09-00719 EMC

1 associated with the United States Chess Federation.

2 3. I agree to give up all rights that I would have if I chose to proceed to trial,
3 including the rights to a jury trial with the assistance of any attorney; to confront and cross-
4 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise
5 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and
6 to pursue any affirmative defenses and present evidence. I also agree to waive venue, if
7 necessary, for the charges filed in this case.

8 4. I agree to give up my right to appeal my conviction, the judgment, and orders of
9 the Court. I also agree to waive any right I have to appeal any aspect of my sentence, including
10 any orders relating to forfeiture and or restitution.

11 5. I agree not to file any collateral attack on my conviction or sentence, including a
12 petition under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, or motion under 18 U.S.C. § 3582, at any
13 time in the future after I am sentenced, except that I reserve my right to claim that my counsel
14 was ineffective in connection with the negotiation of this Agreement or the entry of my guilty
15 plea. I understand that the government will not preserve any physical evidence obtained in this
16 case.

17 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
18 entered. I understand that by entering into this Agreement: (a) I agree that the facts set forth in
19 Paragraph 2 of this Agreement shall be admissible against me under Fed. R. Evid. 801(d)(2)(A)
20 in any subsequent proceeding, including at trial, in the event I move to withdraw my guilty plea
21 to the charge in the Information, and (b) I expressly waive any and all rights under Fed. R. Crim.
22 11(f) and Fed. R. Evid. 410 with regard to the facts set forth in Paragraph 2 of this Agreement in
23 such subsequent proceeding.

24 7. I agree that the Court will use the Sentencing Guidelines to calculate my sentence.
25 I understand that the Court must consult the Guidelines and take them into account when
26 sentencing, together with the factors set forth in 18 U.S.C. § 3553(a). I also understand that the
27 Court is not bound by the Guidelines calculations below, the Court may conclude that a higher

28
PLEA AGREEMENT
CR 09-00719 EMC

1 Guidelines range applies to me, and, if it does, I will not be entitled, nor will I ask to withdraw
 2 my guilty plea. I agree that regardless of the sentence that the Court imposes on me, I will not be
 3 entitled, nor will I ask, to withdraw my guilty plea. I also agree that the Sentencing Guidelines
 4 offense level will be calculated as follows and that I will not ask for any other adjustment to or
 5 reduction in the offense level or for a downward departure from the Guidelines range as
 6 determined by the Court. The parties have reached no agreement regarding my Criminal History
 7 Category.

- 8 a. Base Offense Level: U.S.S.G. §2B1.1(a). 6
- 9 b. Acceptance of Responsibility: If I meet the -2
 10 requirements of U.S.S.G. §3E1.1, I may be entitled to
 11 a two-level reduction for acceptance of responsibility,
 12 provided that I forthrightly admit my guilt, cooperate
 13 with the Court and the Probation Office in any
 14 presentence investigation ordered by the Court, and
 15 continue to manifest an acceptance of responsibility
 16 through and including the time of sentencing.
- 17 c. Adjusted offense level: 4

16 8. I agree that regardless of any other provision of this Agreement, the government
 17 may and will provide the Court and the Probation Office with all information relevant to the
 18 charged offense and the sentencing decision. I agree that, based on the nature of the offense, the
 19 Court should impose the following special condition of supervised release which is reasonably
 20 related to deterrence and rehabilitation:

21 Special Condition (Searches)

22 The defendant shall submit his person, residence, office, vehicle, or any
 23 property under his control to a search. Such a search shall be conducted by a
 24 United States Probation Officer or any federal, state, or local law enforcement
 25 officer at any time with or without cause. Failure to submit to such a search may
 26 be grounds for revocation; the defendant shall warn any residents that the
 27 premises may be subject to searches.

28 9. I agree to pay restitution for all the losses caused by all the schemes or offenses
 with which I was charged in this case, and I agree that the amount of restitution will not be
 limited to the loss attributable to the count to which I am pleading guilty, pursuant to 18 U.S.C. §

1 3663(a)(3). I agree that the Court may order and I will pay restitution in an amount to be set by
2 the Court, and that restitution will include the following pecuniary harm, regardless of whether
3 such pecuniary harm was reasonably foreseeable: any reasonable cost to any victim, including the
4 cost of responding to an offense, conducting a damage assessment, and restoring the data,
5 program, system, or information to its condition prior to the offense, and any revenue lost, cost
6 incurred, or other damages incurred because of interruption of service. I agree that any fine,
7 forfeiture, or restitution imposed by the Court against me will be immediately due and payable
8 and subject to immediate collection by the government and I understand that the government may
9 seek immediate collection of the entire fine, forfeiture, or restitution from any assets without
10 regard to any schedule of payments imposed by the Court or established by the Probation Office.
11 I agree that I will make a good-faith effort to pay any fine, forfeiture, or restitution I am ordered
12 to pay. Before or after sentencing, I will upon request of the Court, the government, or the
13 Probation Office, provide accurate and complete financial information, submit sworn statements
14 and give depositions under oath concerning my assets and my ability to pay, surrender assets I
15 obtained as a result of my crimes, and release funds and property under my control in order to
16 pay any fine, forfeiture, or restitution. I agree to pay the special assessment at the time of
17 sentencing.

18 10. I agree not to commit or attempt to commit any crimes before sentence is imposed
19 or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial
20 release; not to intentionally provide false information to the Court, the Probation Office, Pretrial
21 Services, or the government; and not to fail to comply with any of the other promises I have
22 made in this Agreement. I agree that if I fail to comply with any promises I have made in this
23 Agreement, then the government will be released from all of its promises in this Agreement,
24 including those set forth in the Government's Promises Section below, but I will not be released
25 from my guilty plea.

26 11. I agree that this Agreement contains all of the promises and agreements between
27 the government and me, and I will not claim otherwise in the future.

28 PLEA AGREEMENT
CR 09-00719 EMC

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

3 The Government's Promises

4 13. The government agrees not to file any additional charges against the defendant
5 that could be filed as a result of the investigation that led to the captioned Information.

6 14. The government agrees to recommend a sentence of one year probation based on
7 the Guideline calculations set out above, unless the defendant violates the terms of the agreement
8 above or fails to accept responsibility.

9 The Defendant's Affirmations

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

13 16. I confirm that the while I considered signing this Agreement, and at the time I
14 signed it, I was not under the influence of any alcohol, drug, or medicine that would impair my
15 ability to understand the Agreement.

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

20
21 Dated: 12-13-11



GREGORY ALEXANDER
Defendant

22
23
24
25
26 Dated: Dec. 13, 2011

MELINDA HAAG
United States Attorney

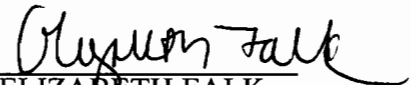

MICHELLE J. KANE
Assistant United States Attorney

27
28 PLEA AGREEMENT
CR 09-00719 EMC

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

5
6 Dated: 12-13-11

BARRY PORTMAN
Federal Public Defender


ELIZABETH FALK
Assistant Federal Public Defender
Attorney for Defendant

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28