



U.S. Department of Justice

United States Attorney
District of Connecticut

United States District Court
District of Connecticut
FILED AT HARTFORD

8/22/07

157 Church Street
New Haven, Connecticut 06510
Tel: (203) 821-3796

August 22, 2007

VIA HAND DELIVERY

Robert Y. Altchiler, Esq.
590 Madison Ave., 21st floor
New York, NY 10022

Re: United States v. Michael Dolan,
3:06 Cr. 253 (AWT)

Dear Mr. Altchiler:

This letter confirms the plea agreement entered into between your client, Michael Dolan (the "defendant"), and the United States Attorney's Office for the District of Connecticut (the "Government") concerning the referenced criminal matter.

THE PLEA AND OFFENSE

The defendant agrees to plead guilty to Count One and Count Eight of the Indictment. Count One charges him with conspiracy to commit fraud in connection with access devices, in violation of Title 18, United States Code, Section 1029(b)(2). Count Eight charges him with aggravated identity theft, in violation of Title 18, United States Code, Section 1028A(a)(1). He understands that to be guilty Count One, the following elements of the offense must be satisfied:

1. that two or more persons entered into an agreement to possess fifteen or more counterfeit access devices, in violation of Title 18, United States Code, Section 1029(a)(3), as charged in the Indictment;
2. that the defendant knowingly and willfully became a member of the conspiracy;
3. that one of the members of the conspiracy knowingly committed at least one of the overt acts charged in the Indictment; and
4. that the overt act was committed to further some objective of the conspiracy.

The defendant understands that to be guilty of Count Eight, the following elements of the offense must be satisfied:

1. that the defendant possessed and used a means of identification of another person;
2. that the defendant did so knowingly and without lawful authority; and
3. that the defendant did so during and in relation to the violation charged in Count One.

THE PENALTIES

Count One, in which the defendant is pleading guilty to a conspiracy to violate Title 18, United States Code, Section 1029(a)(3), carries a maximum penalty of five years' imprisonment and a \$250,000 fine. Count Eight carries a mandatory penalty of two years' imprisonment. In addition, under 18 U.S.C. § 3583, the Court may impose a term of supervised release of not more than three years, to begin at the expiration of any term of imprisonment imposed. The defendant understands that should he violate any condition of the supervised release during its term, he may be required to serve a further term of two years' imprisonment with no credit for the time already spent on supervised release.

The defendant also is subject to the alternative fine provision of 18 U.S.C. § 3571. Under this section, the maximum fine that may be imposed on the defendant is the greatest of the following amounts: (1) twice the gross gain to the defendant resulting from the offense; (2) twice the gross loss resulting from the offense; or (3) \$250,000.

In addition, the defendant is obligated by 18 U.S.C. § 3013 to pay a special assessment of \$100.00 on each count of conviction. The defendant agrees to pay the special assessment to the Clerk of the Court on the day the guilty plea is accepted.

Finally, unless otherwise ordered, should the Court impose a fine of more than \$2,500 as part of the sentence, interest will be charged on the unpaid balance of a fine amount not paid within 15 days after the judgment date. See 18 U.S.C. § 3612(f) (2000). Other penalties and fines may be assessed on the unpaid balance of a fine pursuant to 18 U.S.C. §§ 3572(h), (i) & 3612(g).

Restitution

In addition to the other penalties provided by law, pursuant to 18 U.S.C. §§ 3663(a)(3) & 3663A(a)(1), the Court shall order the defendant to make restitution to the extent set forth in the attached Rider Concerning Restitution.

The order of restitution has the effect of a civil judgment against the defendant. Failure to pay restitution may result in the defendant's re-sentencing to any sentence which might originally have been imposed by the Court under 18 U.S.C. § 3614. Failure to pay restitution may also void this plea agreement. Finally, in addition to the court-ordered restitution, the court may order that the conditions of its order of restitution be made a condition of probation or supervised release. In that case, failure to pay restitution may result in the revocation of probation or supervised release, or a modification of the conditions thereof, under 18 U.S.C. § 3583(e).

Forfeiture

The defendant understands and agrees that by virtue of his plea of guilty he waives any rights or cause of action to claim that he is a "substantially prevailing party" for the purpose of recovery of attorney fees and other litigation costs in any related forfeiture proceeding pursuant to 28 U.S.C. § 2465(b)(1).

THE SENTENCING GUIDELINES

Applicability

The defendant understands that although application of the United States Sentencing Guidelines is not mandatory, they are advisory and the Court is required to consider any applicable Sentencing Guidelines as well as other factors enumerated in 18 U.S.C. § 3553(a) to tailor an appropriate sentence in this case. See United States v. Booker, 125 S. Ct. 738 (2005). The defendant expressly understands and agrees that the Sentencing Guideline determinations will be made by the Court, by a preponderance of the evidence, based upon input from the defendant, the Government, and the United States Probation Officer who prepares the presentence investigation report. The defendant further understands that he has no right to withdraw his guilty plea if his sentence or the Guideline application is other than he anticipated. The defendant expressly understands

and agrees that the version of the United States Sentencing Guidelines in effect at the time of his sentencing will apply in this case ("U.S.S.G.").

Acceptance of Responsibility

At this time, the Government agrees to recommend that the Court reduce by two levels the defendant's Adjusted Offense Level under U.S.S.G. § 3E1.1(a), based on the defendant's prompt recognition and affirmative acceptance of personal responsibility for the offense. Moreover, the Government intends to file a motion with the Court pursuant to U.S.S.G. § 3E1.1(b) recommending that the Court reduce defendant's Adjusted Offense Level by one additional level based on the defendant's prompt notification of his intention to enter a plea of guilty, in the event that the Probation Office concludes that the defendant's Adjusted Offense Level is 16 or greater. This recommendation is conditioned upon the defendant's full, complete, and truthful disclosure to the Probation Office of information requested, of the circumstances surrounding his commission of the offense, of his criminal history, and of his financial condition by submitting a complete and truthful financial statement. In addition, this recommendation is conditioned upon the defendant timely providing complete information to the Government concerning his involvement in the offense to which he is pleading guilty. The defendant expressly understands that the Court is not obligated to accept the Government's recommendation on the reduction.

The Government will not make this recommendation if the defendant engages in any acts which (1) indicate that the defendant has not terminated or withdrawn from criminal conduct or associations (U.S.S.G. § 3E1.1); (2) could provide a basis for an adjustment for obstructing or impeding the administration of justice (U.S.S.G. § 3C1.1); or (3) constitute a violation of any condition of release. Moreover, the Government will not make this recommendation if the defendant seeks to withdraw his plea of guilty. The defendant expressly understands that he may not withdraw his plea of guilty if, for the reasons explained above, the Government does not make this recommendation.

Statement of Offense Conduct

The defendant's Statement of Offense Conduct is attached to and made a part of this plea agreement. Pursuant to United States v. Mezzanatto, 513 U.S. 196 (1995), the defendant agrees that, if he does not plead guilty or moves to withdraw his

guilty plea, the facts set forth in the Statement of Offense Conduct shall be admissible under Fed. R. Evid. 801(d)(2)(A) in any subsequent proceeding, including trial, and he expressly waives any and all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 with regard to the facts set forth in the Statement of Offense Conduct in such subsequent proceeding.

The defendant understands that this statement does not purport to set forth all of the relevant conduct and characteristics that may be considered by the Court for purposes of sentencing. The defendant expressly understands that this statement is not binding on the Court. The defendant also understands that the Government and the United States Probation Office are obligated to advise the Court of any additional relevant facts that subsequently come to their attention.

Guidelines Stipulation

Pursuant to U.S.S.G. § 6B1.4, the parties stipulate to the application of the Sentencing Guidelines to the extent set forth below. The parties each reserve the right to seek other adjustments or departures under the Sentencing Guidelines, or to request the imposition of a non-Guidelines sentence.

Offense Level

1. The Guidelines provision that applies to Count One is U.S.S.G. § 2B1.1(a)(2), pursuant to which the base offense level is 6.

2. Because the loss from the offense exceeded \$400,000, a 14-level increase is warranted pursuant to U.S.S.G. § 2B1.1(b)(1)(H).

3. Because the offense involved 250 or more victims, a 6-level increase is warranted pursuant to U.S.S.G. § 2B1.1(b)(2)(C).

4. Because the offense involved sophisticated means, a 2-level increase is warranted pursuant to U.S.S.G. § 2B1.1(b)(9)(C).

5. Because the offense involved the possession and use of device-making equipment, a 2-level increase is warranted pursuant to U.S.S.G. § 2B1.1(b)(10)(A).

6. Because the defendant was an organizer and leader of criminal activity that involved five or more participants, and was otherwise extensive, a 4-level increase is warranted pursuant to U.S.S.G. § 3B1.1(a).

7. Assuming the defendant clearly demonstrates acceptance of responsibility and timely notifies the Government of his intention to enter a plea of guilty, a three-level reduction will be warranted pursuant to U.S.S.G. § 3E1.1.

In accordance with the above, the applicable Guidelines offense level is 31. Based upon the information now available to the Government, including representations by the defendant, the defendant's Criminal History Category is II. The Guidelines sentencing range for an offense level of 31 and Criminal History Category of II consists of 121 to 151 months' imprisonment, a 2- to 3-year term of supervised release, and a fine in the range of \$15,000 to \$150,000. Because the statutory maximum term of imprisonment on Count One is five years, the Guidelines sentencing range on Count One is 60 months' imprisonment, pursuant to U.S.S.G. § 5G1.1(a).

Under U.S.S.G. § 2B1.6, the defendant would further be subject to a mandatory two-year consecutive sentence, as required by Title 18, United State Code, Section 1028A, upon his conviction for Count Eight.

The Stipulated Guidelines Sentencing Range

Based upon the calculations set forth above, the parties stipulate that the Sentencing Guidelines specify a term of imprisonment for 84 months, a term of supervised release for 2 to 3 years, and, after determining the defendant's ability to pay, a fine of \$3,000 to \$30,000 (the "Stipulated Guidelines Sentencing Range").

The defendant expressly understands that the Court is not bound by this agreement on the Guidelines range specified above. The defendant further expressly understands that he will not be permitted to withdraw the plea of guilty if the Court imposes a sentence outside the Guideline range or fine range set forth in this agreement.

In the event the Probation Office or the Court contemplates any sentencing calculations different from those stipulated by the parties, the parties reserve the right to respond to any inquiries and make appropriate legal arguments

regarding the proposed alternate calculations. Moreover, the Government expressly reserves the right to challenge or defend any sentencing determination, other than that stipulated by the parties, in any post-sentencing proceeding.

Waiver of Right to Appeal or Collaterally Attack Sentence

The defendant acknowledges that under certain circumstances he is entitled to appeal his conviction and sentence. It is specifically agreed that the defendant will not appeal or collaterally attack in any proceeding, including but not limited to a motion under 28 U.S.C. § 2255 and/or § 2241, the conviction or sentence of imprisonment imposed by the Court if that sentence is within or below the Stipulated Sentencing Guidelines Range, even if the Court imposes such a sentence based on an analysis different from that specified above. Similarly, the Government will not appeal a sentence imposed within or above the Stipulated Guidelines Sentencing Range. The defendant expressly acknowledges that he is knowingly and intelligently waiving his appellate rights.

Information to the Court

The Government expressly reserves its right to address the Court with respect to an appropriate sentence to be imposed in this case. Moreover, it is expressly understood that the Government will discuss the facts of this case, including information regarding the defendant's background and character, 18 U.S.C. § 3661, with the United States Probation Office and will provide the Probation Officer with access to its file, with the exception of grand jury material.

WAIVER OF RIGHTS

Waiver of Trial Rights and Consequences of Plea

The defendant understands that he has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent him.

The defendant understands that he has the right to plead not guilty or to persist in that plea if it has already been made, the right to a public trial, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against him, the right not to be compelled to incriminate himself, and the right to compulsory process for the attendance of witnesses to testify in his

defense. The defendant understands that by pleading guilty he waives and gives up those rights and that, if the plea of guilty is accepted by the Court, there will not be a further trial of any kind.

The defendant understands that if he pleads guilty, the Court may ask him questions about each offense to which he pleads guilty, and if he answers those questions falsely under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making false statements.

Waiver of Statute of Limitations

The defendant understands and agrees that should the conviction following defendant's plea of guilty pursuant to this plea agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this plea agreement (including any indictment or counts the Government has agreed to dismiss at sentencing pursuant to this plea agreement) may be commenced or reinstated against defendant, notwithstanding the expiration of the statute of limitations between the signing of this plea agreement and the commencement or reinstatement of such prosecution. The defendant agrees to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date the plea agreement is signed.

Waiver of Right To Post-Conviction DNA Testing

The defendant understands that the Government has various items of physical evidence in its possession in connection with this case that could be subjected to DNA testing. The defendant further understands that following conviction in this case, he could file a motion with the Court to require DNA testing of physical evidence pursuant to 18 U.S.C. § 3600 and § 3600A in an attempt to prove his innocence. The defendant fully understands his right to have all the physical evidence in this case tested for DNA, has discussed this right with his counsel, and knowingly and voluntarily waives his right to have such DNA testing performed on the physical evidence in this case. Defendant fully understands that because he is waiving this right, the physical evidence in this case will likely be destroyed or will otherwise be unavailable for DNA testing in the future.

ACKNOWLEDGEMENT OF GUILT; VOLUNTARINESS OF PLEA

The defendant acknowledges that he is entering into this agreement and is pleading guilty freely and voluntarily because he is guilty. The defendant further acknowledges that he is entering into this agreement without reliance upon any discussions between the Government and him (other than those described in the plea agreement letter), without promise of benefit of any kind (other than the concessions contained in the plea agreement letter), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges his understanding of the nature of the offense to which he is pleading guilty, including the penalties provided by law. The defendant also acknowledges his complete satisfaction with the representation and advice received from his undersigned attorney. The defendant and his undersigned counsel are unaware of any conflict of interest concerning counsel's representation of the defendant in the case.

The defendant expressly acknowledges that he is not a "prevailing party" within the meaning of Public Law 105-119, section 617 ("the Hyde Amendment") with respect to the count of conviction or any other count or charge that may be dismissed pursuant to this agreement. The defendant voluntarily, knowingly, and intelligently waives any rights he may have to seek reasonable attorney's fees and other litigation expenses under the Hyde Amendment.

SCOPE OF THE AGREEMENT

The defendant acknowledges and understands that this agreement is limited to the undersigned parties and cannot bind any other federal authority, or any state or local authority. The defendant acknowledges that no representations have been made to him with respect to any civil or administrative consequences that may result from this plea of guilty because such matters are solely within the province and discretion of the specific administrative or governmental entity involved. Finally, the defendant understands and acknowledges that this agreement has been reached without regard to any civil tax matters that may be pending or which may arise involving him.

COLLATERAL CONSEQUENCES

The defendant further understands that he will be adjudicated guilty of each offense to which he has pleaded guilty and will be deprived of certain rights, such as the right to

vote, to hold public office, to serve on a jury, or to possess firearms. The defendant understands that pursuant to section 203(b) of the Justice For All Act, the Bureau of Prisons or the Probation Office will collect a DNA sample from the defendant for analysis and indexing. Finally, the defendant understands that the Government reserves the right to notify any state or federal agency by which he is licensed, or with which he does business, as well as any current or future employer of the fact of his conviction.

SATISFACTION OF FEDERAL CRIMINAL LIABILITY; BREACH

The defendant's guilty plea, if accepted by the Court, will satisfy the federal criminal liability of the defendant in the District of Connecticut as a result of his participation in the conspiracy to commit fraud in connection with access devices, which forms the basis of the Indictment in this case. After sentencing, the Government will move to dismiss any remaining counts against the defendant in the Indictment.

The defendant understands that if, before sentencing, he violates any term or condition of this agreement, engages in any criminal activity, or fails to appear for sentencing, the Government may void all or part of this agreement. If the agreement is voided in whole or in part, defendant will not be permitted to withdraw his plea of guilty.

NO OTHER PROMISES

The defendant acknowledges that no other promises, agreements, or conditions have been entered into other than those

Robert Y. Altchiler, Esq.
Page 11 of 11

set forth in this plea agreement, and none will be entered into unless set forth in writing, signed by all the parties.

This letter shall be presented to the Court, in open court, and filed in this case.

Very truly yours,

KEVIN J. O'CONNOR
UNITED STATES ATTORNEY

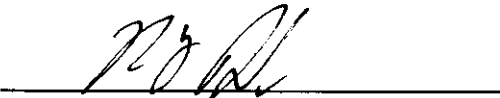

EDWARD CHANG
ASSISTANT UNITED STATES ATTORNEY

The defendant certifies that he has read this plea agreement letter and its attachment(s) or has had it read or translated to him, that he has had ample time to discuss this agreement and its attachment(s) with counsel and that he fully understands and accepts its terms.


MICHAEL DOLAN
Defendant

8-22-07
Date

I have thoroughly read, reviewed and explained this plea agreement and its attachment(s) to my client who advises me that he understands and accepts its terms.


ROBERT Y. ALTCHILER, ESQ.
Attorney for the Defendant

8/22/07
Date

RIDER CONCERNING RESTITUTION

Pursuant to Title 18, United States Code, Section 3663A(a)(3), the defendant agrees to pay restitution to all victims of the defendant's criminal conduct and not merely for those victims included in the count(s) to which the defendant agrees to plead guilty. Pursuant to Title 18, United States Code, Section 3663A(b), the order of restitution shall require that the defendant -

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense --

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to --

(i) the greater of --

(I) the value of the property on the date of the damage, loss, or destruction; or

(II) the value of the property on the date of sentencing, less

(ii) the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim --

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

STATEMENT OF OFFENSE CONDUCT

Defendant Michael Dolan stipulates to the following facts:

1. From in or about 2002 through in or about 2006, Michael Dolan ("Dolan") agreed and conspired with one or more other individuals to obtain names, credit card numbers, bank account numbers, Social Security account numbers, and other private personal and financial information through an Internet "spamming" and "phishing" scheme that targeted AOL subscribers.

2. The scheme involved the use of software to collect AOL account names from chat rooms and to "spam" those accounts with counterfeit emails, including emails purporting to convey electronic greeting cards from Hallmark.com. An AOL subscriber who attempted to open one of the purported greeting cards would unwittingly download a software trojan that would prevent the subscriber from accessing AOL without first entering information including the subscriber's name, credit card number, bank account number, and Social Security account number. The subscriber's information would then be transmitted over the Internet and stored in databases for later retrieval.

3. The fraudulently obtained information was used to order products online and to produce counterfeit debit cards, which were used at ATM machines and retail outlets such as gas stations.

4. On or about September 26, 2005, during and in furtherance of the conspiracy, Dolan knowingly possessed, without lawful authority, the private personal and financial information of approximately 96 individuals, consisting in part of names, addresses, bank account numbers, credit card numbers, and Social Security account numbers.

Dated: August 22, 2007
New Haven, Connecticut



MICHAEL DOLAN
Defendant



ROBERT Y. ALTCHILER, ESQ.
Attorney for the Defendant