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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	No. 3:17-cr-00146-SLG
)	
Plaintiff,)	
)	PLEA AGREEMENT
vs.)	
)	
SUZETTE KUGLER,)	
)	
Defendant.)	
_____)	

Unless the parties jointly inform the Court in writing of any additional agreements, this document in its entirety contains the terms of the plea agreement between the defendant and the United States. This agreement is limited to the District of Alaska; it does not bind other federal, state, or local prosecuting authorities.

I. SUMMARY OF AGREEMENT, FEDERAL RULE OF CRIMINAL PROCEDURE 11

A. Summary of Agreement

The defendant agrees to plead guilty to the following count(s) of the Indictment in this case. Count 1 FRAUD IN CONNECTION WITH COMPUTERS in violation of 18 U.S.C. § 1030 (a)(5)(A). In exchange for the defendant's plea, the United States stipulates that the loss amount was less than \$6,500 but more than \$5,000 and that United States Sentencing Guideline ("U.S.S.G") §2B1.1 specific offense characteristic (b)(18)(A)(iii) and (B) **do not** apply in this matter.

The parties stipulate that offense characteristics U.S.S.G. §2B1.1(b)(10)(C) and §2B1.1(b)(18)(A)(ii) **do** apply in this matter. The parties will be free at sentencing to make any recommendation regarding the term of imprisonment imposed, including recommendations for intermittent confinement, community confinement or home detention pursuant to §5C1.1.

The United States further agrees not to prosecute the defendant further for any other offense related to the events that resulted in the charges contained in the Indictment. After the Court accepts the plea agreement and imposes the sentence, the United States agrees to dismiss the remaining counts as they relate to the defendant: Count 2.

The defendant will waive all rights to appeal the conviction and sentence imposed under this agreement. The defendant will also waive all rights to collaterally attack the conviction and sentence, except on the grounds of ineffective assistance of counsel or the voluntariness of the plea.

B. Federal Rule of Criminal Procedure 11

Unless the parties otherwise inform the Court in writing, Federal Rule of Criminal Procedure 11(c)(1)(A) and (B) will control this plea agreement. Thus, the defendant may not withdraw from this agreement or the guilty plea(s) if the Court rejects the parties' sentencing recommendations at the sentencing hearing.

II. CHARGES, ELEMENTS, FACTUAL BASIS, STATUTORY PENALTIES AND OTHER MATTERS AFFECTING SENTENCE

A. Charges

1. The defendant agrees to plead guilty to the following count(s) of the Indictment:

Count 1: FRAUD IN CONNECTION WITH COMPUTERS, a violation of Title 18 U.S.C. § 1030(a)(5)(A).

B. Elements

The elements of the charge(s) to which the defendant is pleading guilty are as follows:

1. First, the defendant knowingly caused the transmission of a program, code or command to a computer;
2. Second, as a result of the transmission, the defendant intentionally impaired without authorization the integrity or availability of data, program, system, or information; and
3. Third, the computer was used in or affected interstate or foreign commerce or communication.

C. Factual Basis

The defendant admits the truth of the allegations in Count 1 of the Indictment and the truth of the following statement, and the parties stipulate that the Court may rely upon this statement to support the factual basis for the guilty plea and for the imposition of the sentence:

On May 5, 2017, Anchorage FBI responded to Alaska-based airline PenAir regarding recent computer intrusions on their network and systems. Those intrusions targeted the ticketing and station management networked database service provided by Sabre Corporation to PenAir that was responsible for the airlines ticketing and reservations. The Sabre ticketing network utilized by PenAir is used in and affects interstate commerce.

The defendant conducted several unauthorized intrusions in PenAir's Sabre database with malicious intent between April and May 2017. On April 5, 2017, the defendant modified a PenAir's employee account in such a way that her access permissions were removed. On May 2, 2017, the defendant accessed the Sabre system again without authorization and deleted the station information for eight airports. Station information is the airport specific portal for PenAir employees to access Sabre. This deletion prevented employees in any of those eight airports from being able to book, ticket, modify, or board any flight until the stations were rebuilt in the system. PenAir personnel worked through the night to bring the stations back online, preventing the potential for substantial disruption to critical infrastructure.

On May 3, 2017, the defendant deleted two of the three seat maps used by PenAir from the Sabre system. Seat maps are used to tie ticketed passengers to specific seats on the planes. Without seat maps PenAir cannot board or ticket any passengers for any flight. PenAir personnel caught the deletion three days before it was to take effect and were able to restore the mapping by the time the flights were meant to board. Remediation efforts involved significant time and expense, affected over 100 computers on the PenAir network, and resulted in a loss to PenAir exceeding \$5,000 but less than \$6,500.

FBI personnel from Anchorage and California executed a search warrant at the Defendant's residence in Desert Hot Springs, California on July 27, 2017. Two laptops that were seized as part of the search had Sabre virtual private network ("VPN") connectivity software installed on them. Each laptop contained a log file called scvpn.log which contained records of VPN access to the Sabre system. The VPN accesses documented in the logs were correlated to the VPN logs previously obtained from Sabre and provided conclusive proof that the Defendant had knowingly caused the transmission of the codes or commands from her residence to the Sabre ticketing network between on or about April 5, 2017, through on or about May 3, 2017, with the intent of impairing the integrity or availability of data, a program, system or information on a computer used in or affecting interstate commerce.

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D. Statutory Penalties and Other Matters Affecting Sentence

1. Statutory Penalties

The maximum statutory penalties applicable to the charges to which the defendant is pleading guilty, based on the facts to which the defendant will admit in support of the guilty plea(s), are as follows:

Count 1: FRAUD IN CONNECTION WITH COMPUTERS

- 1) Imprisonment: 10 years
- 2) Fine: \$250,000
- 3) Supervised Release: Three years
- 4) Special Assessment: \$100

2. Other Matters Affecting Sentence

a. Conditions affecting the defendant's sentence

The following conditions may also apply and affect the defendant's sentence:

- 1) pursuant to Comment 7 of U.S.S.G. § 5E1.2, the Court may impose an additional fine to pay the costs to the government of any imprisonment and supervised release term;
- 2) pursuant to 18 U.S.C. § 3612(f), unless otherwise ordered, if the Court imposes a fine of more than \$2,500, interest will be charged on the balance not paid within 15 days after the judgment date;
- 3) upon violating any condition of supervised release, a further term of imprisonment equal to the period of the supervised release may be imposed, with no credit for the time already spent on supervised release;
- 4) the Court may order the defendant to pay restitution pursuant to the 18 U.S.C. § 3663 and U.S.S.G. § 5E1.1, and

if 18 U.S.C. § 3663A (mandatory restitution for certain crimes) applies, the Court shall order the defendant to pay restitution.

b. Payment of Special Assessment

The defendant agrees to pay the entire special assessment in this case on the day the Court imposes the sentence. All payments will be by check or money order, and are to be delivered to the Clerk of Court, United States District Court, 222 W. 7th Ave. Box 4, Rm. 229, Anchorage, AK 99513-7564.

c. Consequences of Felony Conviction

Any person convicted of a federal felony offense may lose or be denied federal benefits including any grants, loans, licenses, food stamps, welfare or other forms of public assistance, as well as the right to own or possess any firearms, the right to vote, the right to hold public office, and the right to sit on a jury. If applicable, any defendant who is not a United States citizen may be subject to deportation from the United States following conviction for a criminal offense and will not be permitted to return unless the defendant specifically receives the prior approval of the United States Attorney General.

E. Restitution

The defendant agrees to pay restitution in the amount of \$5,616 in full to PenAir by the time of sentencing in this matter.

F. Forfeiture

There is no forfeiture allegation in this matter. Any property facilitating or involved in the offense or conviction is listed below and is subject to voluntary abandonment by the Defendant.

G. Voluntary Abandonment

Personal property to be voluntarily abandoned under this agreement include the following items: **two black Dell brand laptop computers** (model PP32LB serial 1FKPXG1 and model TTYFJA00 serial FL54162) seized from the defendant's residence that were used to access the Sabre network and facilitate the offense of conviction. The defendant warrants that the defendant had sole possession and ownership of the property referenced above, and that there are no claims to, or liens or encumbrances on the property referenced above. Defendant will take all steps as requested by the United States to pass clear title to the property, including but not limited to, executing documents, and testifying truthfully in any legal proceeding. The defendant agrees to forever abandon and disclaim any right, title, and interest the defendant may have in the property described above, and warrant to the Court free, clear and unencumbered title to the aforelisted property.

III. ADVISORY UNITED STATES SENTENCING GUIDELINES, GUIDELINE APPLICATION AGREEMENTS, SENTENCING RECOMMENDATIONS

A. Advisory United States Sentencing Guidelines

The Court must consult the advisory United States Sentencing Commission Guidelines [U.S.S.G.] as well as the factors set forth in 18 U.S.C. § 3553(a) when considering the sentence to impose. The U.S.S.G. do not establish the statutory maximum or minimum sentence applicable to the offense(s) to which the defendant is pleading guilty. The U.S.S.G. are not mandatory and the Court is not bound to impose a sentence recommended by the U.S.S.G.

B. Guideline Application Agreements

The parties have no agreements on any guideline applications unless set forth below in this section.

1. Acceptance of responsibility

If the United States concludes that the defendant has satisfied the criteria set out in U.S.S.G. § 3E1.1 and the applicable application notes, **the United States agrees to recommend the defendant for a two level downward adjustment for acceptance of responsibility and, if U.S.S.G. § 3E1.1(b) applies, to move for the additional one level adjustment for acceptance of responsibility.** If, at any time prior to imposition of the sentence, the United States concludes that the defendant has failed to fully satisfy the criteria set out in U.S.S.G. § 3E1.1, or has acted in a manner inconsistent with acceptance of responsibility, the United States will not make or, if already made, will withdraw this recommendation and motion.

C. Sentencing Recommendations

The United States Probation Office will prepare the defendant's pre-sentence report in which it will include a recommended calculation of the defendant's sentence range under the U.S.S.G. Both the United States and the defendant will have the opportunity to argue in support of or in opposition to the guideline sentence range calculation the U.S.P.O. recommends, as well as present evidence in support of their respective sentencing arguments.

The United States stipulates that §2B1.1(b)(18)(A)(iii) and (B) are inapplicable in this matter. Although the Defendant intended to cause the offense of

conviction, there was no substantial disruption of critical infrastructure occurred as a result of the remediation efforts by the victim and loss incurred accordingly.

Conversely, the parties stipulate that the four level offense-specific enhancement mandated by §2B1.1(b)(18)(A)(ii) applies in this matter, as does the “sophisticated means” enhancement mandated §2B1.1(b)(10)(C).

The parties are free to recommend to the Court their respective positions on the appropriate sentence to be imposed in this case based on the stipulated facts set forth in Section II.C, any additional facts established at the imposition of sentence hearing, the applicable statutory penalty sections, the advisory U.S.S.G., and the sentencing factors set forth in 18 U.S.C. § 3553. **The parties are free to make any recommendation for a sentence of imprisonment; a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention provided at least one month is satisfied by imprisonment; or a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community detention, or home detention for imprisonment, pursuant to §5C1.1.**

IV. ADDITIONAL AGREEMENTS BY UNITED STATES

In exchange for the defendant’s guilty plea and the Court’s acceptance of the defendant’s plea and the terms of this agreement, the United States agrees that it will not prosecute the defendant further for any other offense – now known – arising out of the subject of the investigation related to the charges brought in the Indictment in this case and the defendant’s admissions set forth in Section II.C.

Provided, however, if the defendant's guilty plea or sentence is/are rejected, withdrawn, vacated, reversed, set aside, or modified, at any time, in any proceeding, for any reason, the United States will be free to prosecute the defendant on all charges arising out of the investigation of this case including any charges dismissed pursuant to the terms of this agreement, which charges will be automatically reinstated as well as for perjury and false statements. The defendant hereby agrees that he/she waives any defense that the statute of limitations bars the prosecution of such a reinstated charge. After the Court accepts the plea agreement and after sentencing, the United States will dismiss the remaining counts as they relate to the defendant: Count 2.

V. WAIVER OF TRIAL RIGHTS, APPELLATE RIGHTS, COLLATERAL ATTACK RIGHTS, CLAIM FOR ATTORNEY FEES AND COSTS, AND RULE 410

A. Trial Rights

Being aware of the following, the defendant waives these trial rights:

- If pleading to an Information, the right to have the charges presented to the grand jury prior to entering the guilty plea;
- The right to a speedy and public trial by jury on the factual issues establishing guilt or any fact affecting the mandatory minimum and statutory penalties, and any issue affecting any interest in any assets subject to forfeiture;
- The right to object to the composition of the grand or trial jury;

- The right to plead not guilty or to persist in that plea if it has already been made;
- The right to be presumed innocent and not to suffer any criminal penalty unless and until the defendant’s guilt is established beyond a reasonable doubt;
- The right to be represented by counsel at trial and if necessary to have a counsel appointed at public expense to represent the defendant at trial – the defendant is not waiving the right to have counsel continue to represent the defendant during the sentencing phase of this case;
- The right to confront and cross examine witnesses against the defendant, and the right to subpoena witnesses to appear in the defendant’s behalf;
- The right to remain silent at trial, with such silence not to be used against the defendant, and the right to testify in the defendant’s own behalf; and
- The right to contest the validity of any searches conducted on the defendant’s property or person.

B. Appellate Rights

The defendant waives the right to appeal the conviction(s) resulting from the entry of guilty plea(s) to the charges set forth in this agreement. The defendant further agrees that if the Court imposes a sentence that does not exceed the statutory maximum penalties – as set forth in Section II.D above in this agreement, the defendant waives without

exception the right to appeal on all grounds contained in 18 U.S.C. § 3742 the sentence the Court imposes – including forfeiture (if applicable) or terms or conditions of probation (if applicable) or supervised release, any fines or restitution.

By waiving these rights, the defendant understands that the conviction(s) and sentence the Court imposes will be final. No other court will conduct appellate review of the conviction(s) or the sentence.

The defendant agrees that the appellate and collateral attack waivers contained within this agreement will apply to any 18 U.S.C. § 3582(c) modifications, as well as the district court's decision to deny any such modification.

Should the defendant file a notice of appeal in violation in this agreement, it will constitute a material breach of the agreement. The government is free to reinstate any dismissed charges, and withdraw any motions for downward departures, or sentences below the mandatory minimum made pursuant to 18 U.S.C. § 3553(e).

C. Collateral Attack Rights

The defendant agrees to waive all rights to collaterally attack the resulting conviction(s) and/or sentence – including forfeiture (if applicable) or terms or conditions of probation (if applicable) or supervised release, and any fines or restitution – the Court imposes. The only exceptions to this collateral attack waiver are as follows: 1) any challenge to the conviction or sentence alleging ineffective assistance of counsel – based on information not now known to the defendant and which, in the exercise of reasonable diligence, could not be known by the defendant at the time the Court imposes sentence; and 2) a challenge to the voluntariness of the defendant's guilty plea(s).

D. Claim for Attorney Fees and Costs

Because this is a negotiated resolution of the case, the parties waive any claim for the award of attorney fees and costs from the other party.

E. Evidence Rule 410 and Fed. R. Crim. P. 11(f)

By signing this agreement, the defendant admits the truth of the facts in the Factual Basis portion of this agreement set forth in Section II C. The defendant agrees that the statements made by her in signing this agreement shall be deemed usable and admissible against the defendant as stipulations in any hearing, trial or sentencing that may follow, even if the defendant fails to enter a guilty plea pursuant to this agreement. The foregoing provision acts as a modification, and express waiver, of Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11(f).

VI. ADEQUACY OF THE AGREEMENT

Pursuant to Local Criminal Rule 11.2 (d)(7) and (8), this plea agreement is appropriate in that it conforms with the sentencing goals that would otherwise be applicable to the defendant's case if the defendant had gone to trial and had been convicted on all counts in the charging instrument.

VII. THE DEFENDANT'S ACCEPTANCE OF THE TERMS OF THIS PLEA AGREEMENT

I, SUZETTE KUGLER, the defendant, affirm this document contains all of the agreements made between me – with the assistance of my attorney – and the United States regarding my plea(s). There are no other promises, assurances, or agreements the United States has made or entered into with me that have affected my decision to enter

any plea of guilty or to enter into this agreement. If there are any additional promises, assurances, or agreements, United States and I will jointly inform the Court in writing before I enter my guilty plea(s).

I understand that no one, including my attorney, can guarantee the outcome of my case or what sentence the Court may impose if I plead guilty. If anyone, including my attorney, has done or said anything other than what is contained in this agreement, I will inform the Court when I stand before it to enter my plea.

I enter into this agreement understanding and agreeing that the conditions set forth herein are obligatory and material to this agreement and that any failure on my part to fulfill these obligations will constitute a material breach of this agreement. If I breach this agreement, I agree the United States, in its sole discretion, may withdraw from this agreement and may reinstate prosecution against me on any charges arising out of the investigation in this matter. If my compliance with the terms of this plea agreement becomes an issue, at an appropriate hearing, during which I agree any of my disclosures will be admissible, the Court will determine whether or not I have violated the terms of this agreement. I understand the government's burden to prove a breach will be by a preponderance of the evidence.

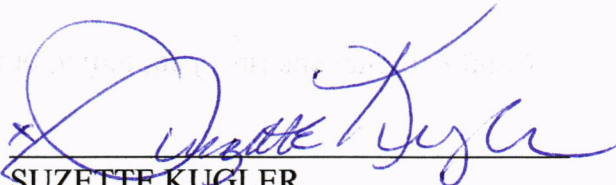
I understand the Court will ask me under an oath to answer questions about the offense(s) to which I am pleading guilty and my understanding of this plea agreement. I understand that I may be prosecuted if I make false statements or give false answers and may suffer other consequences set forth in this agreement.

I have read this plea agreement carefully and understand it thoroughly. I know of no reason why the Court should find me incompetent to enter into this agreement or to enter my plea(s). I enter into this agreement knowingly and voluntarily. I understand that anything that I discuss with my attorney is privileged and confidential, and cannot be revealed without my permission. Knowing this, I agree that this document will be filed with the Court.

I am fully satisfied with the representation given me by my attorney and am prepared to repeat this statement at the time I stand before the Court and enter my guilty plea(s). My attorney and I have discussed all possible defenses to the charge(s) to which I am pleading guilty. My attorney has investigated my case and followed up on any information and issues I have raised to my satisfaction. My attorney has taken the time to fully explain the legal and factual issues involved in my case to my satisfaction. We have discussed the statute(s) applicable to my offense and sentence as well as the possible effect the U.S.S.G. may have on my sentence.

Based on my complete understanding of this plea agreement, I therefore admit that I am guilty of Count 1 of the Indictment.

DATED: Dec 29, 2017


SUZETTE KUGLER
Defendant

As counsel for the defendant, I have conveyed all formal plea offers. I have discussed the terms of this plea agreement with the defendant, have fully explained the charge(s) to which the defendant is pleading guilty, the necessary elements thereto, all possible defenses, and the consequences of a guilty plea to a felony. Based on these discussions, I have no reason to doubt that the defendant is knowingly and voluntarily

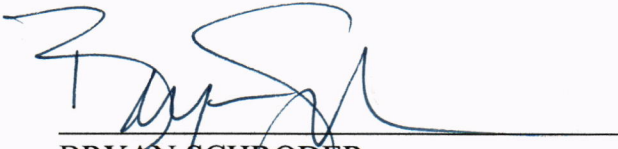
entering into this agreement and entering a plea of guilty. I know of no reason to question the defendant's competence to make these decisions. If, prior to the imposition of sentence, I become aware of any reason to question the defendant's competency to enter into this plea agreement or to enter a plea of guilty, I will immediately inform the court.

DATED: 1/15/18


Ean Vizzi
Attorney for SUZETTE KUGLER

On behalf of the United States, the following accepts the defendant's offer to plead guilty under the terms of this plea agreement.

DATED: 1/23/18


BRYAN SCHRODER
United States of America
United States Attorney