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9 Attorney for Plaintiff
 United States of America
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11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,) CR No. 09-1149-GAF
 14)
 Plaintiff,) RULE 11(c)(1)(C) PLEA AGREEMENT
 15) FOR DEFENDANT BRIAN THOMAS
 v.) METTENBRINK
 16)
 BRIAN THOMAS METTENBRINK,)
 17)
 Defendant.)
 18)
 19)

20 1. This constitutes the binding plea agreement, under
 21 Federal Rule of Criminal Procedure 11(c)(1)(C), between BRIAN
 22 THOMAS METTENBRINK ("defendant") and the United States Attorney's
 23 Office for the Central District of California ("the USAO") in the
 24 above-captioned case. This agreement is limited to the USAO and
 25 cannot bind any other federal, state or local prosecuting,
 26 administrative or regulatory authorities.
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PLEA

2. Defendant gives up the right to indictment by a grand jury and agrees to plead guilty to a single-count, first superseding information in the form attached to this agreement or a substantially similar form.

NATURE OF THE OFFENSE

3. In order for defendant to be guilty of the count charged in the information, which charges a violation of Title 18, United States Code, Sections 1030(a)(5)(A)(iii)(2008), the following must be true: (1) defendant accessed a computer without authorization; (2) defendant acted intentionally; (3) defendant's conduct caused loss to one or more persons during any one-year period aggregating at least \$5,000; and (4) the computer accessed was used in interstate or foreign commerce or communication. Defendant admits that defendant is, in fact, guilty of this offense as described in the information.

PENALTIES AND RESTITUTION

4. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 1030(a)(5)(A)(iii), (a)(5)(B)(i), (c)(2)(A) is: 1 year imprisonment; a 1-year period of supervised release; a fine of \$250,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest; and a mandatory special assessment of \$50.

5. Supervised release is a period of time following imprisonment during which defendant will be subject to various restrictions and requirements. Defendant understands that if defendant violates one or more of the conditions of any

1 supervised release imposed, defendant may be returned to prison
2 for all or part of the term of supervised release, which could
3 result in defendant serving a total term of imprisonment greater
4 than the statutory maximum stated above.

5 6. Defendant understands that the conviction in this case
6 may subject defendant to various collateral consequences,
7 including but not limited to, deportation, revocation of
8 probation, parole, or supervised release in another case, and
9 suspension or revocation of a professional license. Defendant
10 understands that unanticipated collateral consequences will not
11 serve as grounds to withdraw defendant's guilty plea.

12 7. Defendant understands that defendant will be required to
13 pay full restitution to the victim of the offense. Defendant
14 agrees that, in return for the USAO's compliance with its
15 obligations under this agreement, the amount of restitution is
16 not restricted to the amounts alleged in the count to which
17 defendant is pleading guilty and may include losses arising from
18 charges not prosecuted pursuant to this agreement as well as all
19 relevant conduct in connection with those charges. The parties
20 currently believe that the applicable amount of restitution is
21 approximately \$20,000 (jointly and severally liable with all
22 other defendants charged with participating in the January 2008
23 DDOS attacks against the Church of Scientology), but recognize
24 and agree that this amount could change based on facts that come
25 to the attention of the parties prior to sentencing. Defendant
26 further agrees that defendant will not seek the discharge of any
27 restitution obligation, in whole or in part, in any present or
28 future bankruptcy proceeding.

FACTUAL BASIS

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2 8. Defendant and the USAO agree and stipulate to the
3 statement of facts provided below. This statement of facts
4 includes facts sufficient to support a plea of guilty to the
5 charge described in this agreement and to establish the
6 sentencing guideline factors set forth in paragraph 12 below. It
7 is not meant to be a complete recitation of all facts relevant to
8 the underlying criminal conduct or all facts known to defendant
9 that relate to that conduct.

10 At all times relevant herein, the Church of
11 Scientology ("COS"), which had its administrative
12 headquarters in Los Angeles County, operated several
13 websites in interstate and foreign commerce and
14 communication (the "COS websites").

15 Beginning on or about January 24, 2008, and
16 continuing to on or about January 29, 2008, defendant
17 Brian Thomas Mettenbrink, working in concert with
18 others, knowingly and intentionally accessed the COS
19 websites without authorization. Specifically,
20 defendant downloaded software from an internet message
21 board allegedly related to an anti-COS group calling
22 themselves "Anonymous." Defendant used that software
23 to, without authorization, access the COS websites at
24 such a high rate that it impaired the integrity and
25 availability of the COS websites and the computer
26 system where they were hosted. Defendant intended to
27 access the COS websites without authorization and
28 intended to impair the availability of the COS websites
in this manner. This is a variation of a distributed
denial of service attack, or a "DDOS" attack.

By this conduct, defendant and the others who
participated in the DDOS attack caused more than \$5,000
in loss to the COS in a one-year period. Specifically,
the COS, after attempting to mitigate the attack with
internal personnel, contracted with an outside service
on or about January 20, 2008, to restore the
availability of the COS websites. Then, on or about
January 31, 2008, the outside service charged the COS
an additional \$20,000 fee because of the continuing
ferocity of the ongoing DDOS attack.

WAIVER OF CONSTITUTIONAL RIGHTS

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2 9. By pleading guilty, defendant gives up the following
3 rights:

4 a) The right to persist in a plea of not guilty.
5 b) The right to a speedy and public trial by jury.
6 c) The right to the assistance of legal counsel at
7 trial, including the right to have the Court appoint counsel for
8 defendant for the purpose of representation at trial. (In this
9 regard, defendant understands that, despite his plea of guilty,
10 he retains the right to be represented by counsel - and, if
11 necessary, to have the court appoint counsel if defendant cannot
12 afford counsel - at every other stage of the proceedings.)

13 d) The right to be presumed innocent and to have the
14 burden of proof placed on the government to prove defendant
15 guilty beyond a reasonable doubt.

16 e) The right to confront and cross-examine witnesses
17 against defendant.

18 f) The right, if defendant wished, to testify on
19 defendant's own behalf and present evidence in opposition to the
20 charges, including the right to call witnesses and to subpoena
21 those witnesses to testify.

22 g) The right not to be compelled to testify, and, if
23 defendant chose not to testify or present evidence, to have that
24 choice not be used against defendant.

25 By pleading guilty, defendant also gives up any and all
26 rights to pursue any affirmative defenses, Fourth Amendment or
27 Fifth Amendment claims, challenges to venue, and other pretrial
28 motions that have been filed or could be filed.

1 defendant's sentence. Defendant understands that the Sentencing
2 Guidelines are only advisory, and that after considering the
3 Sentencing Guidelines, the Court may be free to exercise its
4 discretion to impose any reasonable sentence up to the maximum
5 set by statute for the crimes of conviction.

6 12. Defendant and the USAO agree and stipulate to the
7 following applicable sentencing guideline factors:

8 Base Offense Level : +6 [U.S.S.G. § 2B1.1(a)(2)]

9 Specific Offense
10 Characteristics

11 Loss amount greater
12 than \$10,000 but [U.S.S.G.
fewer than \$30,000 : +4 § 2B1.1(b)(1)(E)]

13 Adjustments

14 Acceptance of
Responsibility : -2 [U.S.S.G. § 3E1.1(a)]

15 The parties agree not to seek, argue, or suggest that any
16 other specific offense characteristics, adjustments, or
17 departures be imposed.

18 13. Defendant and the USAO agree that an appropriate
19 disposition of this case is that the court impose a sentence of
20 12 months incarceration, a one-year period of supervised release
21 (with defendant required to devote 20 hours per week to community
22 service, as directed by the Probation Office, although defendant
23 can move to reduce the number of hours if it unduly burdens his
24 ability to work), a special assessment of \$50, and restitution as
25 ordered by the court. The parties also agree that no prior
26 imprisonment (other than credits that the Bureau of Prisons may
27 allow under 18 U.S.C. § 3585(b)) may be credited against this
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1 stipulated sentence, including credit under Sentencing Guideline
2 5G1.3.

3 14. The stipulations in this agreement do not bind either
4 the United States Probation Office or the Court. Both defendant
5 and the USAO are free to: (a) supplement the facts by supplying
6 relevant information to the United States Probation Office and
7 the Court, (b) correct any and all factual misstatements relating
8 to the calculation of the sentence, and (c) argue on appeal and
9 collateral review that the Court's sentencing guidelines
10 calculations are not error, although each party agrees to
11 maintain its view that the calculations in paragraph 12 are
12 consistent with the facts of this case.

13 15. Defendant understands and agrees that this agreement is
14 entered into pursuant to Federal Rule of Criminal Procedure
15 11(c)(1)(C). So long as defendant does not breach the agreement,
16 defendant may withdraw from this agreement and render it null and
17 void if the Court refuses to be bound by this agreement. The
18 USAO may, in its discretion, withdraw from this agreement and
19 render it null and void if the defendant breaches this agreement
20 or the Court refuses to be bound by this agreement. If defendant
21 or government withdraws from the plea agreement under this
22 provision, defendant waives any Speedy Trial Act, 18 U.S.C.
23 § 3161 et seq., rights with regard to the underlying indictment.

24 DEFENDANT'S OBLIGATIONS

25 16. Defendant agrees that he will:
26 a) Plead guilty as set forth in this agreement.
27 b) Not knowingly and willfully fail to abide by all
28 sentencing stipulations contained in this agreement.

1 c) Not knowingly and willfully fail to: (i) appear as
2 ordered for all court appearances, (ii) surrender as ordered for
3 service of sentence, (iii) obey all conditions of any bond, and
4 (iv) obey any other ongoing court order in this matter.

5 d) Not commit any crime; however, offenses which would
6 be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are
7 not within the scope of this agreement.

8 e) Not knowingly and willfully fail to be truthful at
9 all times with Pretrial Services, the U.S. Probation Office, and
10 the Court.

11 f) Pay the applicable special assessment at or before
12 the time of sentencing unless defendant lacks the ability to pay.

13 17. Defendant further agrees to the following conditions to
14 be imposed during any period of probation or supervised release:

15 a. Defendant shall use computers, computer-related
16 devices, screen/user names, passwords, email accounts, and
17 Internet Service Providers (ISPs) only within the scope of his
18 employment or as otherwise approved by the Probation Office for
19 personal or school use. Computer and computer-related devices
20 include, but are not limited to, personal computers, personal
21 data assistants (PDAs), Internet appliances, electronic games,
22 and cellular telephones, as well as peripheral equipment, that
23 can access, or can be modified to access, the Internet,
24 electronic bulletin boards, other computers, or similar media.
25 Defendant shall immediately report any changes in defendant's
26 employment affecting defendant's access and/or use of computers
27 or the Internet, including e-mail;

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1 extent that such defenses existed as of the date of defendant's
2 signing of this agreement.

3 LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

4 21. Defendant gives up the right to appeal any sentence
5 imposed by the Court and the manner in which the sentence is
6 determined, provided that the sentence is that agreed to in
7 paragraph 13 above. Defendant also gives up any right to bring a
8 post-conviction collateral attack on the conviction or sentence,
9 except a post-conviction collateral attack based on a claim of
10 ineffective assistance of counsel, a claim of newly discovered
11 evidence, or a explicitly retroactive change in the applicable
12 Sentencing Guidelines, sentencing statutes, or statutes of
13 conviction.

14 22. The USAO gives up its right to appeal any sentence
15 imposed by the Court, provided that the sentence is that agreed
16 to in paragraph 13 above.

17 COURT NOT A PARTY

18 23. The Court is not a party to this agreement and need not
19 accept any of the USAO's sentencing recommendations or the
20 parties' stipulations. Even if the Court ignores any sentencing
21 recommendation, finds facts or reaches conclusions different from
22 any stipulation, and/or imposes any sentence up to the maximum
23 established by statute, defendant cannot, for that reason,
24 withdraw defendant's guilty plea, and defendant will remain bound
25 to fulfill all defendant's obligations under this agreement. No
26 one - not the prosecutor, defendant's attorney, or the Court -
27 can make a binding prediction or promise regarding the sentence

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1 defendant will receive, except that it will be within the
2 statutory maximum.

3 NO ADDITIONAL AGREEMENTS

4 24. Except as set forth herein, there are no promises,
5 understandings or agreements between the USAO and defendant or
6 defendant's counsel. Nor may any additional agreement,
7 understanding or condition be entered into unless in a writing
8 signed by all parties or on the record in court.

9 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

10 25. The parties agree and stipulate that this Agreement
11 will be considered part of the record of defendant's guilty plea
12 hearing as if the entire Agreement had been read into the record
13 of the proceeding.

14 This agreement is effective upon signature by defendant and
15 an Assistant United States Attorney.

16 AGREED AND ACCEPTED

17 UNITED STATES ATTORNEY'S OFFICE
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 GEORGE S. CARDONA
Acting United States Attorney

20 *ES*
21 ERIK M. SILBER
Assistant United States Attorney
22 Cyber and Intellectual Property
Crimes Section
23

1/25/10
Date

24 I have read this agreement and carefully discussed every
25 part of it with my attorney. I understand the terms of this
26 agreement, and I voluntarily agree to those terms. My attorney
27 has advised me of my rights, of possible defenses, of the
28 Sentencing Guideline provisions, and of the consequences of

