



AUG 10 2009

U.S. Department of Justice

*Michael K. Loucks*  
*Acting United States Attorney*  
*District of Massachusetts*

Main Reception: (617) 748-3100

*John Joseph Moakley United States Courthouse*  
*1 Courthouse Way*  
*Suite 9200*  
*Boston, Massachusetts 02210*

July 23, 2009

Syrie Fried, Esq.  
Assistant Federal Public Defender  
Federal Public Defender's Office  
408 Atlantic Ave., 3rd Floor  
Boston, MA 02210

Re: Francis G. Janosko  
Criminal No. 08-10323-GAO

Dear Syrie:

This letter sets forth the Agreement between the Acting United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Francis G. Janosko ("Defendant"), in the above-captioned case. The Agreement is as follows:

1. Change of Plea

At the earliest practicable date, Defendant shall plead guilty to the following count of the above-captioned Indictment: Count 1 (intentional damage to a protected computer in violation of 18 U.S.C. § 1030(a)(5)). Defendant expressly and unequivocally admits that he committed the crime charged in Count 1 of the Indictment; did so knowingly and intentionally; and is in fact guilty of that offense. The U.S. Attorney agrees to dismiss Count 2 (aggravated identity theft in violation of 18 U.S.C. § 1028A) following the imposition of sentence.

2. Penalties

Defendant faces the following minimum mandatory and maximum penalties: for Count 1 (intentional damage to a protected computer in violation of 18 U.S.C. § 1030(a)(5)), up to 10 years' imprisonment, a fine of up to the greatest of \$250,000 or twice the gain or loss, restitution, forfeiture, a special assessment of \$100, and up to 3 years' supervised release.

3. Sentencing Guidelines

The parties agree to jointly take the following positions at sentencing with regard to offense conduct, adjustments, and criminal history under the United States Sentencing guidelines:

The appropriate sentencing guideline for Count 1 is U.S.S.G. § 2B1.1, and his Adjusted Offense Level (without acceptance of responsibility) is 14, which is calculated as follows:

**U.S.S.G. § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States)**

(a)	Base offense level Statutory maximum < 20 years	6
(b)(1)(C)	\$10,000 < Loss ≤ \$30,000	4
(b)(15)(A)(ii)	Conviction for 18 U.S.C. § 1030(a)(5)(A)(i)	4
<b>TOTAL</b>		<b>14</b>

The U.S. Attorney and Defendant agree that there is no basis for a departure or deviation under the factors set forth in 18 U.S.C. § 3553(a) from the sentencing range established by the United States Sentencing Guidelines.

The U.S. Attorney's agreement that the disposition set forth below is appropriate in this case is based, in part, on Defendant's prompt acceptance of personal responsibility for the offense(s) of conviction in this case. Based on Defendant's prompt acceptance of personal responsibility for the offense(s) of conviction in this case, and information known to the U.S. Attorney at this time, the U.S. Attorney agrees to recommend that the Court reduce by two levels Defendant's Adjusted Offense Level under U.S.S.G. § 3E1.1.

The U.S. Attorney specifically reserves the right not to recommend a reduction under U.S.S.G. § 3E1.1 if, at any time between his execution of this Agreement and sentencing Defendant:

- (a) Fails to admit a complete factual basis for the plea;
- (b) Fails to truthfully admit his conduct in the offenses of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under U.S.S.G. § 1B1.3;

- (d) Fails to provide truthful information about his financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under U.S.S.G. § 1B1.3;
- (f) Engages in acts which form a basis for finding that Defendant has obstructed or impeded the administration of justice under U.S.S.G. § 3C1.1;
- (g) Intentionally fails to appear in Court or violates any condition of release;
- (h) Commits a crime;
- (i) Transfers any asset protected under any provision of this Agreement; and/or
- (j) Attempts to withdraw his guilty plea.

Defendant expressly understands that he may not withdraw his plea of guilty, unless the Court rejects this Agreement under Fed. R. Crim. P. 11(c)(5).

4. Agreed Disposition

The U.S. Attorney and Defendant agree, pursuant to Fed. R. Crim. P. 11(c)(1)(C), that the following is the appropriate disposition of this case:

- (a) Incarceration for 18 months;
- (b) No fine, unless the Court finds that Defendant is able, with the use of a reasonable installment schedule, or is likely to become able to pay a fine;
- (c) Restitution in an amount to be determined by the Court;
- (d) Mandatory special assessment of \$100; and
- (f) Supervised release for 3 years.

5. Payment of Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless Defendant establishes to the satisfaction of the Court that Defendant is financially unable to do so.

6. Waiver of Rights to Appeal and to Bring Collateral Challenge

- (a) Defendant has conferred with his attorney and understands that he has the right to challenge both his conviction and his sentence on direct appeal. Defendant also understands that he may, in some circumstances, be able to argue that his conviction and/or sentence should be set aside or reduced in a collateral challenge, such as pursuant to a motion under 28 U.S.C. § 2255 or 18 U.S.C. § 3582(c).
- (b) Defendant waives any right he has to challenge his conviction on direct appeal or in collateral challenge.
- (c) Defendant agrees that he will not file a direct appeal nor collaterally challenge any imprisonment sentence of 18 months or less. This provision is binding even if the Court employs a Guidelines analysis different from that set forth in this Agreement.
- (d) The U.S. Attorney likewise agrees that, regardless of the analysis employed by the Court, he will not appeal any imprisonment sentence of 18 months or more.

7. Other Post-sentence Events

- (a) In the event that, notwithstanding the waiver provision of ¶ 6, Defendant appeals or collaterally challenges his sentence, the U.S. Attorney reserves the right to argue the correctness of the sentence imposed by the district court, in addition to arguing that any appeal or collateral challenge is waived as a result of the waiver in ¶ 6.
- (b) If, notwithstanding the waiver provision of ¶ 6(c), Defendant seeks re-sentencing, he agrees that he will not seek to be re-sentenced with the benefit of any change to the criminal history category that the Court calculated at the time of Defendant's original sentencing, except to the extent that he has been found actually factually innocent of a prior crime. Thus, for example, Defendant will not seek to be re-sentenced based on the set aside of a prior state-court conviction that occurs after sentencing unless he has been found actually factually innocent of that prior crime.
- (c) In the event of a re-sentencing following an appeal from or collateral challenge to Defendant's sentence, the U.S. Attorney reserves the right to seek a departure from the Sentencing Guidelines and a sentence outside the Sentencing Guidelines if, and to the extent, necessary to reinstate the sentence advocated by the U.S. Attorney at Defendant's initial sentencing pursuant to this agreement.

8. Probation Department Not Bound By Agreement

The sentencing disposition agreed upon by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the United States Probation Office. Defendant's

plea will be tendered pursuant to Fed. R. Crim. P. 11(c)(1)(C). Defendant cannot withdraw his plea of guilty unless the sentencing judge rejects this Agreement. If the sentencing judge rejects this Agreement, this Agreement shall be null and void at the option of either the United States or Defendant. In this regard, Defendant hereby waives any defense to any charges which he might otherwise have under any statute of limitations or the Speedy Trial Act.

9. Forfeiture

Defendant hereby waives and releases any and all claims he may have to any vehicles, currency, or other personal property seized by the United States, or seized by any state or local law enforcement agency and turned over to the United States, during the investigation and prosecution of this case, and consents to the forfeiture of all such assets. Without limiting the generality of the foregoing, Defendant hereby specifically waives and releases his claims to the documents seized from him at the Plymouth County Correctional Facility, seized by the Plymouth County Correctional Facility personnel, and turned over to the Federal Bureau of Investigation on or about February 7, 2007.

This waiver of claims specifically excludes the following seized property: his autobiography, which the United States has agreed to return to Defendant (redacted of contraband information, if any), and as to which Defendant hereby waives any and all claims arising from or relating to the seizure, detention, and return of the property.

10. Information For Presentence Report

Defendant agrees to provide all information requested by the U.S. Probation Office concerning his assets.

11. Civil Liability

By entering into this Agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to any tax liability, which Defendant may have incurred or may incur as a result of his conduct and his plea of guilty to the charges specified in paragraph 1 of this Agreement.

12. Withdrawal of Plea By Defendant

Should Defendant move to withdraw his guilty plea at any time, this Agreement shall be null and void at the option of the U.S. Attorney.

13. Breach of Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this Agreement, has violated any condition of his pretrial release, or has committed any crime following his execution of this Agreement, the U.S. Attorney may, at his sole option, be released

from his commitments under this Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to him under the law, irrespective of whether he elects to be released from his commitments under this Agreement. Further, the U.S. Attorney may pursue any and all charges which have been, or are to be, dismissed pursuant to this Agreement. Defendant recognizes that no such breach by him of an obligation under this Agreement shall give rise to grounds for withdrawal of his guilty plea. Defendant understands that, should he breach any provision of this agreement, the U.S. Attorney will have the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements which may be made by him, and any information, materials, documents or objects which may be provided by him to the government subsequent to this Agreement, without any limitation. In this regard, Defendant hereby waives any defense to any charges which he might otherwise have under any statute of limitations or the Speedy Trial Act.

14. Who Is Bound By Agreement

This Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

15. Complete Agreement

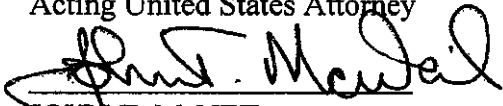
This letter contains the complete and only agreement between the parties. No promises, representations or agreements have been made other than those set forth in this letter. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral. This Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the Agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Scott L. Garland.

Very truly yours,

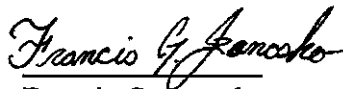
MICHAEL K. LOUCKS  
Acting United States Attorney

By:

  
JOHN T. McNEIL  
Acting Deputy Chief, Criminal Division

ACKNOWLEDGMENT OF PLEA AGREEMENT

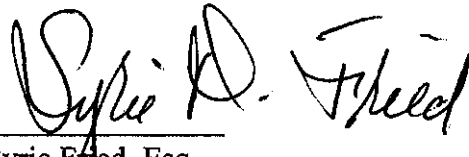
I have read this letter in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter. I understand the crimes to which I have agreed to plead guilty, the maximum penalties for those offenses and Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty and I believe this Agreement is in my best interest.



Francis G. Janosko  
Defendant

Date: 8/5/09

I certify that Francis G. Janosko has read this Agreement and that we have discussed its meaning. I believe he understands the Agreement and is entering into the Agreement freely, voluntarily and knowingly.



Syrie Fried, Esq.  
Attorney for Defendant

Date: 8/31/09