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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. FAISAL ASHRAF, AKA Sal, Defendant-Appellant.	No. 18-50071 D.C. No. 8:13-cr-00088-DOC-1 MEMORANDUM* (Filed Mar. 20 2023)
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Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding
Argued and Submitted February 14, 2023
Pasadena, California

Before: O'SCANNLAIN, HURWITZ, and BADE,
Circuit Judges.

Faisal Ashraf appeals his conviction pursuant to plea agreement on three misdemeanor counts of intentionally accessing a computer without or in excess of authorization with the intent to obtain information. *See* 18 U.S.C. § 1030(a)(2)(C). Ashraf also appeals the district court's order to pay to Hewlett Packard ("HP") about \$12.6 million in restitution. The

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

district court had jurisdiction under 18 U.S.C. § 3231. This court has jurisdiction under 28 U.S.C. § 1291. Because the facts are known to the parties, we repeat them only as necessary to explain our decision.

I

Ashraf first challenges his conviction on the ground that the district court erred in finding the plea to have a sufficient factual basis. *See* Fed. R. Crim. P. 11(b)(3). However, Ashraf’s plea agreement waived any appeal of his conviction except “based on a claim that [his] guilty pleas were involuntary.” “An appeal waiver in a plea agreement is enforceable if the language of the waiver encompasses the defendant’s right to appeal on the grounds raised, and if the waiver was knowingly and voluntarily made.” *United States v. Minasyan*, 4 F.4th 770, 777-78 (9th Cir. 2021) (cleaned up).

Ashraf argues that his factual-basis claim goes to knowledge and voluntariness because the factual-basis requirement is “designed to protect a defendant who is in the position of pleading [guilty] . . . without realizing that his conduct does not actually fall within the charge.” *McCarthy v. United States*, 394 U.S. 459, 467 (1969). But while Rule 11(b)(3) may have the purpose of protecting uninformed defendants, it does not follow that every Rule 11(b)(3) violation renders the plea unknowing or involuntary. Here, the record shows that Ashraf was fully informed that his admitted conduct might not constitute a crime.

Specifically, Ashraf waived any argument “pursuant to *United States v. Nosal*, 676 F.3d 854 (9th Cir. 2012) (en banc),” that his conduct was noncriminal. Ashraf does not challenge the district court’s finding that this waiver was knowing and voluntary. Instead, he implausibly asserts that his factual-basis argument is not “pursuant to *Nosal*.” While Ashraf’s opening brief does not cite *Nosal*, his argument depends on the Supreme Court’s recent decision in *Van Buren v. United States*, which endorsed *Nosal*’s holding. 141 S. Ct. 1648, 1653 n.2 (2021) (noting circuit split involving *Nosal*); *id.* at 1662 (resolving the circuit split in favor of *Nosal*). Put simply, Ashraf knew his admitted conduct was arguably noncriminal, and chose to waive the argument and to plead guilty.

II

Ashraf also challenges his conviction on the ground that the district court erred by improperly participating in plea discussions. *See* Fed. R. Crim. P. 11(c)(1). Ashraf argues that the district court’s participation renders his appeal waiver invalid. *See United States v. Gonzalez-Melchor*, 648 F.3d 959, 965 (9th Cir. 2011). But in contrast to *Gonzalez-Melchor*, where the appeal waiver was “negotiated by the district court in exchange for a reduced sentence,” *id.*, the district court here at most encouraged Ashraf not to move to withdraw from an existing agreement. Whether or not such after-the-fact encouragement violates Rule 11(c)(1), it cannot retroactively render a plea agreement involuntary. Since Ashraf’s Rule

11(c)(1) claim does not go to knowledge or voluntariness, it is waived.

Even if we were to reach the merits, Ashraf has not shown prejudicial error. *See United States v. Davila*, 569 U.S. 597, 601 (2013) (holding that a Rule 11(c)(1) violation warrants vacatur only if prejudice is shown). Although the district court encouraged Ashraf to move to withdraw his plea and then discouraged him from doing so, the court later retracted its statements, offered to appoint new counsel to consult with Ashraf, provided additional time for Ashraf to consult with new counsel, and stated that it would not prejudge any motion. The court's later comments ameliorated any earlier impropriety. Ashraf has not offered any basis for concluding that he would have moved to withdraw absent the court's statements, or that the court would have granted such a motion. Since Ashraf cannot show prejudicial error, his Rule 11(c)(1) claim would fail even if not waived.

III

Finally, Ashraf argues on various grounds that the district court's restitution order was erroneous. Although Ashraf's plea agreement waived his right to appeal "the amount and terms of any restitution order," this waiver cannot be enforced because, as the Government concedes, Ashraf did not receive "a reasonably accurate estimate of the amount of the restitution order to which he [was] exposed at the time [he agreed] to waive the appeal." *United States v.*

Lo, 839 F.3d 777, 785 (9th Cir. 2016) (cleaned up).¹ Accordingly, we reach the merits.

Ashraf first argues that the restitution order lacked statutory authorization because HP's losses were not caused by "the specific conduct that is the basis of the offense of conviction." *United States v. Yijun Zhou*, 838 F.3d 1007, 1013 (9th Cir. 2016) (cleaned up). But restitution can be ordered for losses beyond those caused by the offense conduct if the defendant specifically consented to such restitution. *United States v. Soderling*, 970 F.2d 529, 532-33 (9th Cir. 1992). Here, Ashraf agreed to restitution "for any losses suffered" as a result of conduct "relevant" to the convictions. HP's losses resulted from Ashraf's purchases through its computer system, which related to Ashraf's convictions for accessing that system.

Ashraf also argues that the district court adopted an erroneous valuation method for HP's losses. To the contrary, the district court correctly concluded that actual losses include lost entitlement to the "higher price" for products improperly obtained at a discount. *United States v. Ali*, 620 F.3d 1062, 1069 (9th Cir. 2010). Ashraf suggests that later precedent limited losses to "lost profits on sales that would have taken place if not for the infringing conduct." *United States v. Anderson*, 741 F.3d 938, 953 (9th Cir. 2013). But *Ali* and *Anderson*

¹ Ashraf raised this argument in his reply brief. No rule of this circuit required him to raise it earlier. *Cf. United States v. Desotell*, 929 F.3d 821, 826 (7th Cir. 2019) (noting circuit split regarding whether appeal waivers must be attacked in the defendant-appellant's opening brief).

do not conflict; they simply involve different kinds of losses. In *Anderson*, a copyright infringer had no right to sell the product, and so the victim was entitled to the profits it would have made absent those sales. 741 F.3d at 953. In *Ali*, a discount appropriator had no right to receive the product at a discount, and, since he had already received it, the victim was entitled to the proper, higher price. 620 F.3d at 1070. *Ali* governs the present case: Ashraf did not violate a copyright, but rather obtained an improper discount.

Last, Ashraf argues that the district court unreasonably assumed that HP had the same overhead costs for products sold at a discount and products sold at the higher price.² But the district court assumed no such thing. Overhead costs are simply irrelevant for calculating HP's lost entitlement.

IV

The judgment of the district court is **AFFIRMED**.

² As evidence for such a disparity, Ashraf cites a colloquy from a different case in which an HP representative agreed that revenue differs from profits. Ashraf's unopposed motion for judicial notice of this colloquy (Dkt. No. 60) is **GRANTED**.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES
OF AMERICA,

Plaintiff-Appellee,

v.

FAISAL ASHRAF,
AKA Sal,

Defendant-Appellant.

No. 18-50071

D.C. No.

8:13-cr-00088-DOC-1

Central District of
California, Santa Ana

ORDER

(Filed Jul. 6 2023)

Before: O'SCANNLAIN, HURWITZ, and BADE,
Circuit Judges.

The panel has voted to deny the petition for rehearing and the petition for rehearing en banc. The panel has voted unanimously to deny the petition for rehearing. Judge Bade has voted to deny the petition for rehearing en banc, and Judges O'Scannlain and Hurwitz have so recommended. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing and the petition for rehearing en banc are **DENIED**.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE DAVID O. CARTER,
JUDGE PRESIDING**

UNITED STATES)	
OF AMERICA,)	
Plaintiff,)	<u>CERTIFIED</u>
vs.)	No. 8:13-CR-0088-DOC
)	Item No. 8
FAISAL ASHRAF,)	
aka "SAL",)	
Defendant.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Arraignment/Change of Plea

Santa Ana, California

Monday, November 16, 2015

Debbie Gale, CSR 9472, RPR, CCRR
Federal Official Court Reporter
United States District Court
411 West 4th Street, Room 1-053
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* * *

[8] THE COURT: Well, this is Case No. 13-0088. And it's a plea agreement that the Court has before it.

And, sir, would you raise your right hand.
Debbie's going to administer an oath to you.

(Defendant sworn.)

THE DEFENDANT: I do.

THE COURT: Thank you, sir. You can put
your hand down.

I go through the plea sequentially, page by page.
Some pages I'll summarize, but it's very easy to follow,
and your counsel will help you.

What's your full name, sir?

THE DEFENDANT: Faisal Ashraf.

THE COURT: And do you understand that
you've been charged with this Third Superseding
Information?

And it states that you're going to plead guilty to
a three-count Third Superseding Information, which
contains or has charges involving three misdemeanor
counts of Intentionally Accessing a Computer Without
Authorization and in Excess of Authorization with the
attempt to obtain information in violation of Title 18,
United States Code, Section 1030(a)(2)(C), (c)(2)(A) of
the Information.

[9] And do you understand the potential arguments
that might be raised pursuant to *United States v.*
Nosal?

And, Counsel, you can explain those rights, then, to the gentleman.

MS. FELDMAN: Yes.

THE COURT: Yeah.

MS. FELDMAN: Sure.

And we did – let me refer to – there's a reference to that case. You're talking about the case, Your Honor?

THE COURT: Well, it's in the document –

MS. FELDMAN: Right.

THE COURT: – I haven't paid too much attention to that case, so why don't you explain it to counsel –

MS. FELDMAN: Sure.

THE COURT: – and the client.

MS. FELDMAN: And I did bring a copy in case, for any reason, the Court wanted it – or defense counsel. But the case, *United States v. Nosal*, 676 F.3d 854 (9th Cir. 2012) referred to in Paragraph 2, that case references rights under the part of exceeding authorized access. It involved an employee of a company who then left the company and asked people who were still working there, his friends who had access to that information that they were properly granted by that company, to send him information to use for [10] a competing company. That's essentially the facts.

Uh, and ultimately the Ninth Circuit said that that is not a crime; that that was not a violation of the 10 – *(Inaudible.)*

(Court reporter requests clarification for the record.)

MS. FELDMAN: It was not a violation of 1030(a)(2) – Title 18, Section 1030(a)2.

We believe that this case is distinguishable from that under the facts of the case. But, to the extent defense for any reason feels that there could be potentially an argument, we have set forth in here – which was in another plea agreement your Court – Your Honor may recall – uh, in the case – that you understand the case and waive any potential arguments you believe you might have under that case to say that there's a problem with this information and it wouldn't be a crime.

I hope I explained that?

THE COURT: Better than I can, Counsel. That's excellent.

MR. RIDDET: Better than I could, as well, Your Honor.

THE COURT: Saw the case, and that's why I asked you to summarize it.

MS. FELDMAN: Thank you.

[11] THE COURT: Do you understand everything that Counsel said?

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THE DEFENDANT: Yes, Your Honor, I do.

* * *

[35] COURT'S FINDINGS

THE COURT: All right. Then I'm going to find that there's a knowing and intelligent waiver of your rights, that you understand the nature and consequences of your plea, that your plea is freely and voluntarily entered into, that there's a sufficient factual basis for this plea.

* * *

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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. FAISAL ASHRAF, aka "Sal," Defendant.	No. SA CR 13-00088(C) -DOC <u>PLEA AGREEMENT</u> <u>FOR DEFENDANT</u> <u>FAISAL ASHRAF</u> FILED 2015 Nov 16 AM 11:42
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1. This constitutes the plea agreement between
FAISAL ASHRAF, also known as ("aka") "Sal"

(“defendant”), and the United States Attorney’s Office for the Central District of California (“the USAO”) in the above-captioned action. This agreement is limited to the USAO and cannot bind any other federal, state, local, or foreign prosecuting, enforcement, administrative, or regulatory authorities.

DEFENDANT’S OBLIGATIONS

2. Defendant agrees to:

a) Give up the right to indictment by a grand jury and, at the earliest opportunity requested by the USAO and provided by the Court, appear and plead guilty to a three-count, third superseding information in the form attached to this agreement as Exhibit A or a substantially similar form, which charges defendant with three misdemeanor counts of intentionally accessing a computer, without authorization and in excess of authorization, with intent to obtain information, in violation of Title 18, United States Code, Sections 1030(a)(2)(C), (c)(2)(A) (the “Information”). Defendant understands potential arguments that might be raised pursuant to United States v. Nosal, 676 F.3d 854 (9th Cir. 2012) (en banc) and waives those arguments.

b) Not contest facts agreed to in this agreement.

c) Abide by all agreements regarding sentencing contained in this agreement.

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d) Appear for all court appearances, surrender as ordered for service of sentence, obey all conditions of any bond, and obey any other ongoing court order in this matter.

e) Not commit any crime; however, offenses that would be excluded for sentencing purposes under United States Sentencing Guidelines (“U.S.S.G.” or “Sentencing Guidelines”) § 4A1.2(c) are not within the scope of this agreement.

f) Be truthful at all times with Pretrial Services, the United States Probation Office, and the Court.

g) Pay the applicable special assessments at or before the time of sentencing unless defendant lacks the ability to pay and prior to sentencing submits a completed financial statement on a form to be provided by the USAO.

h) Not seek the discharge of any restitution obligation, in whole or in part, in any present or future bankruptcy proceeding.

i) Upon the filing of this plea agreement, to promptly withdraw all pending motions.

THE USAO’S OBLIGATIONS

3. The USAO agrees to:

a) Not contest facts agreed to in this agreement.

b) Abide by all agreements regarding sentencing contained in this agreement.

c) Except for criminal tax violations (including conspiracy to commit such violations chargeable under 18 U.S.C. § 371), not further criminally prosecute defendant for violations arising out of defendant's conduct described in the First Superseding Indictment and the agreed-to factual basis set forth in paragraph 11 below. Defendant understands that the USAO is free to criminally prosecute defendant for any other unlawful past conduct or any unlawful conduct that occurs after the date of this agreement. Defendant agrees that at the time of sentencing the Court may consider the uncharged conduct in determining the applicable Sentencing Guidelines range, the propriety and extent of any departure from that range, and the sentence to be imposed after consideration of the Sentencing Guidelines and all other relevant factors under 18 U.S.C. § 3553(a).

d) At the time of sentencing, provided that defendant demonstrates an acceptance of responsibility for the offenses up to and including the time of sentencing, recommend a two-level reduction in the applicable Sentencing Guidelines offense level, pursuant to U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an additional one-level reduction if available under that section.

NATURE OF THE OFFENSES

4. Defendant understands that for defendant to be guilty of the misdemeanor crime of intentionally accessing a computer, without or in excess of authorization, with intent to obtain information, in violation of Title 18, United States Code, Sections 1030(a)(2)(C), (c)(2)(A), as charged in Counts One, Two and Three of the Information, the following must be true: (1) the defendant intentionally accessed without authorization or exceeded authorized access to a computer; and (2) by accessing without authorization or exceeding authorized access to a computer, the defendant obtained information from a computer that was used in or affected commerce or communication between one state and another state or between a state of the United States and a foreign country.

PENALTIES

5. Defendant understands that the statutory maximum sentence that the Court can impose for each violation of Title 18, United States Code, Sections 1030(a)(2), (c)(2)(A), as charged in the Information, is: a one-year period of imprisonment or a five-year period of probation; a one-year period of supervised release; a fine of \$100,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest; and a mandatory special assessment of \$25.

6. Defendant understands, therefore, that while the statutory maximum sentence for each count of conviction is one year imprisonment or five years

probation as set forth in the preceding paragraph, if the Court were to exercise its discretion and impose consecutive sentences on each of the three counts of conviction, instead of concurrent sentences on each of the three counts of conviction, the total statutory maximum sentence for all offenses to which defendant is pleading guilty is: three years imprisonment or a five-year period of probation; a one-year period of supervised release; a fine of \$300,000 or twice the gross gain or gross loss resulting from the offenses, whichever is greatest; and a mandatory special assessment of \$75.

7. Defendant understands that 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 supervised release imposed, defendant may be returned to prison for all or part of the term of supervised release authorized by statute for the offense that resulted in the term of supervised release, which could result in defendant serving a total term of imprisonment greater than the statutory maximum stated above.

8. Defendant understands that should the Court determine that restitution is appropriate and/or required, defendant will be required to pay full restitution to the victim(s) of the offenses to which defendant is pleading guilty. Defendant agrees that, in return for the USAO's compliance with its obligations under this agreement, the Court may order restitution

to persons other than the victim(s) of the offenses to which defendant is pleading guilty and in amounts greater than those alleged in the counts to which defendant is pleading guilty. In particular, defendant agrees that the Court may order restitution to any victim of any of the following for any losses suffered by that victim as a result: (a) any relevant conduct, as defined in U.S.S.G. § 1B1.3, in connection with the offenses to which defendant is pleading guilty; and (b) any counts dismissed and charges not prosecuted pursuant to this agreement as well as all relevant conduct, as defined in U.S.S.G. § 1B1.3, in connection with those counts and charges.

9. Defendant understands that, by pleading guilty, defendant may be giving up valuable government benefits and valuable civic rights. Defendant understands that the conviction in this case may also subject defendant to various other collateral consequences, including but not limited to revocation of probation, parole, or supervised release in another case and suspension or revocation of a professional license. Defendant understands that unanticipated collateral consequences will not serve as grounds to withdraw defendant's guilty plea.

10. Defendant understands that, if defendant is not a United States citizen, the convictions in this case may subject defendant to: removal, also known as deportation, which may, under some circumstances, be mandatory; denial of citizenship; and denial of admission to the United States in the future. The court cannot, and defendant's attorney also may not

be able to, advise defendant fully regarding the immigration consequences of the convictions in this case. Defendant understands that unexpected immigration consequences will not serve as grounds to withdraw defendant's guilty plea.

FACTUAL BASIS

11. Defendant admits that defendant is, in fact, guilty of the offenses to which defendant is agreeing to plead guilty. Defendant and the USAO agree to the statement of facts provided below and agree that this statement of facts is sufficient to support pleas of guilty to the charges described in this agreement and to establish the Sentencing Guidelines factors set forth in paragraph 13 below but is not meant to be a complete recitation of all facts relevant to the underlying criminal conduct or all facts known to either party that relate to that conduct.

At all times relevant to the Superseding Information, Hewlett Packard ("HP") was a company that produced and sold computer equipment. HP offered a program called the "HP Volume Big Deal Rebate Program," also known as ("aka") the "Big Deal" program. The Big Deal program offered special discounts substantially greater than others offered by HP. An HP partner that was seeking a Big Deal discount was required to represent that the products obtained through the program were for internal use by the stated end user and would not be resold, and to obtain a discounted price quote using a protected HP

computer system. Big Deal price quotations were authorized only for transactions involving stated end users purchasing the products for internal use, and were not authorized to obtain products for resellers. If a Big Deal price quotation was authorized, the HP partners would access it through the “HP Partner Portal” computer system. To access the HP Partner Portal computer system, the partner needed a user name and password. HP does not provide user names and passwords where HP products would be sold to unauthorized end users.

Beginning on a date unknown but prior to on or about May 31, 2006 and continuing through on or about August 11, 2009, in Orange County, California, and elsewhere, defendant Faisal Ashraf, aka “Sal,” and his brother, defendant Umer Haseeb, aka “Omar Farooq” (“Haseeb”), intentionally accessed a protected computer without authorization and exceeding authorization, and thereby obtained information from that computer.

More specifically, at his brother Haseeb’s request, defendant Ashraf, without authorization and exceeding authorization, intentionally accessed HP’s Partner Portal computer system using logins and passwords that his brother Haseeb provided to him. HP would not have provided the logins and passwords if HP had been aware that the products to be purchased were for unauthorized end users. Once they obtained unauthorized access to HP’s Partner Portal computer system, defendant Ashraf

and Haseeb obtained information in order to purchase HP products for resale to unauthorized end users or customers. As a result of the above actions, defendant Ashraf and Haseeb thereby caused shipments of HP products under the Big Deal program to be delivered to unauthorized end-users, including Company A, which was engaged in the business of re-selling computer products.

Specifically, on or about April 30, 2007, May 21, 2007, and May 23, 2007, defendant Ashraf, in Orange County, within the Central District of California, and elsewhere, without authorization and exceeding authorization, used login and password information to access the HP Partner Portal computer system to obtain information for unauthorized purchase transactions under the Big Deal program knowing that he was not authorized by HP to do so. For example, on or about May 23, 2007, defendant Ashraf, without authorization and exceeding authorization, accessed HP's Partner Portal computer system with login and password information to HP's website that Haseeb provided to him via email. Ashraf's use of HP logins and passwords described above was unauthorized by HP.

The HP computer equipment met the definition of "computer" set forth in Title 18, United States Code, Section 1030(e)(1) and were used in and affected interstate commerce.

SENTENCING FACTORS

12. Defendant understands that in determining defendant's sentence the Court is required to calculate the applicable Sentencing Guidelines range and to consider that range, possible departures under the Sentencing Guidelines, and the other sentencing factors set forth in 18 U.S.C. § 3553(a). Defendant understands that the Sentencing Guidelines are advisory only, that defendant cannot have any expectation of receiving a sentence within the calculated Sentencing Guidelines range, and that after considering the Sentencing Guidelines and the other § 3553(a) factors, the Court will be free to exercise its discretion to impose any sentence it finds appropriate up to the maximum set by statute for the crimes of conviction.

13. Except as set forth in paragraph 3(d) above, defendant and the USAO have no agreement as to the appropriate sentence or the applicable Sentencing Guidelines factors, including that defendant specifically reserves his right to argue that the applicable Sentencing Guideline Section in this case is USSG § 2X5.2 and the USAO specifically reserves its right to argue that the applicable Sentencing Guideline Section in this case is USSG § 2B1.1. Except as set forth in paragraph 3(d), both parties reserve the right to seek any sentence within the statutory maximum, and to argue for any criminal history score and category, base offense level, specific offense characteristics, adjustments, departures, and variances. As applied to this case, defendant thus reserves the right to seek any sentence lower than

three years imprisonment, including a sentence of probation, and the government reserves the right to argue for any sentence up to the statutory maximum sentence of three years imprisonment.

14. Defendant understands that there is no agreement as to defendant's criminal history or criminal history category.

15. Defendant and the USAO reserve the right to argue for a sentence outside the sentencing range established by the Sentencing Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1), (a)(2), (a)(3), (a)(6), and (a)(7).

WAIVER OF CONSTITUTIONAL RIGHTS

16. Defendant understands that by pleading guilty, defendant gives up the following rights;

- a) The right to persist in a plea of not guilty.
- b) The right to a speedy and public trial by jury.
- c) The right to be represented by counsel – and if necessary have the court appoint counsel – at trial. Defendant understands, however, that, defendant retains the right to be represented by counsel – and if necessary have the court appoint counsel – at every other stage of the proceeding.
- d) The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

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

f) The right to testify and to present evidence in opposition to the charges, including the right to compel the attendance of witnesses to testify.

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

h) Any and all rights to pursue any affirmative defenses. Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

WAIVER OF VENUE

17. Having been fully advised by defendant's attorney regarding the requirements of venue with respect to the offenses to which defendant is pleading guilty, to the extent the offenses to which defendant is pleading guilty were committed, begun, or completed outside the Central District of California, defendant knowingly, voluntarily, and intelligently waives, relinquishes, and gives up: (a) any right that defendant might have to be prosecuted only in the district where the offenses to which defendant is pleading guilty were committed, begun, or completed; and (b) any defense, claim, or argument defendant could raise or assert based upon lack of venue with respect to the offenses to which defendant is pleading guilty.

WAIVER OF STATUTE OF LIMITATIONS

18. Having been fully advised by defendant's attorney regarding application of the statute of limitations to the offenses to which defendant is pleading guilty, defendant hereby knowingly, voluntarily, and intelligently waives, relinquishes, and gives up: (a) any right that defendant might have not to be prosecuted for the offenses to which defendant is pleading guilty because of the expiration of the statute of limitations for those offenses prior to the filing of the information alleging those offenses; and (b) any defense, claim, or argument defendant could raise or assert that prosecution of the offenses to which defendant is pleading guilty is barred by the expiration of the applicable statute of limitations, pre-indictment delay, or any speedy trial violation.

WAIVER OF RETURN OF DIGITAL DATA

19. Understanding that the government has in its possession digital devices and/or digital media seized from defendant, defendant waives any right to the return of digital data contained on those digital devices and/or digital media and agrees that if any of these digital devices and/or digital media are returned to defendant, the government may delete all digital data from those digital devices and/or digital media before they are returned to defendant.

WAIVER OF APPEAL OF CONVICTION

20. Defendant understands that, with the exception of an appeal based on a claim that defendant's guilty pleas were involuntary, by pleading guilty defendant is waiving and giving up any right to appeal defendant's convictions on the offenses to which defendant is pleading guilty.

LIMITED MUTUAL WAIVER
OF APPEAL OF SENTENCE

21. Defendant agrees that, provided the Court imposes a total term of imprisonment on all counts of conviction of no more than 36 months, defendant gives up the right to appeal all of the following: (a) the procedures and calculations used to determine and impose any portion of the sentence; (b) the term of imprisonment imposed by the Court; (c) the fine imposed by the court, provided it is within the statutory maximum; (d) the amount and terms of any restitution order; (e) the term of probation or supervised release imposed by the Court, provided it is within the statutory maximum; and (f) any of the following conditions of probation or supervised release imposed by the Court: the conditions set forth in General Orders 318, 01-05 and/or 05-02 of this Court; the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug use conditions authorized by 18 U.S.C. § 3563(b)(7).

22. The USAO agrees that, provided (a) all portions of the sentence are at or below the statutory

maximum specified above and (b) the Court imposes a term of imprisonment of no less than 36 months, the USAO gives up its right to appeal any portion of the sentence.

RESULT OF WITHDRAWAL OF GUILTY PLEA

23. Defendant agrees that if, after entering guilty pleas pursuant to this agreement, defendant seeks to withdraw and succeeds in withdrawing defendant's guilty pleas on any basis other than a claim and finding that entry into this plea agreement was involuntary, then (a) the USAO will be relieved of all of its obligations under this agreement; and (b) should the USAO choose to pursue any charge that was either dismissed or not filed as a result of this agreement, then (i) any applicable statute of limitations will be tolled between the date of defendant's signing of this agreement and the filing commencing any such action; and (ii) defendant waives and gives up all defenses based on the statute of limitations, any claim of pre-indictment delay, or any speedy trial claim with respect to any such action, except to the extent that such defenses existed as of the date of defendant's signing this agreement.

EFFECTIVE DATE OF AGREEMENT

24. This agreement is effective upon signature and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney.

BREACH OF AGREEMENT

25. Defendant agrees that if defendant, at any time after the signature of this agreement and execution of all required certifications by defendant, defendant's counsel, and an Assistant United States Attorney, knowingly violates or fails to perform any of defendant's obligations under this agreement ("a breach"), the USAO may declare this agreement breached. All of defendant's obligations are material, a single breach of this agreement is sufficient for the USAO to declare a breach, and defendant shall not be deemed to have cured a breach without the express agreement of the USAO in writing. If the USAO declares this agreement breached, and the Court finds such a breach to have occurred, then: (a) if defendant has previously entered guilty pleas pursuant to this agreement, defendant will not be able to withdraw the guilty pleas, and (b) the USAO will be relieved of all its obligations under this agreement.

26. Following the Court's finding of a knowing breach of this agreement by defendant, should the USAO choose to pursue any charge that was either dismissed or not filed as a result of this agreement, then:

a) Defendant agrees that any applicable statute of limitations is tolled between the date of defendant's signing of this agreement and the filing commencing any such action.

b) Defendant waives and gives up all defenses based on the statute of limitations, any

claim of pre-indictment delay, or any speedy trial claim with respect to any such action, except to the extent that such defenses existed as of the date of defendant's signing this agreement.

c) Defendant agrees that: (i) any statements made by defendant, under oath, at the guilty plea hearing (if such a hearing occurred prior to the breach); (ii) the agreed to factual basis statement in this agreement; and (iii) any evidence derived from such statements, shall be admissible against defendant in any such action against defendant, and defendant waives and gives up any claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other federal rule, that the statements or any evidence derived from the statements should be suppressed or are inadmissible.

COURT AND PROBATION OFFICE NOT PARTIES

27. Defendant understands that the Court and the United States Probation Office are not parties to this agreement and need not accept any of the USAO's sentencing recommendations or the parties' agreements to facts or sentencing factors.

28. Defendant understands that both defendant and the USAO are free to: (a) supplement the facts by supplying relevant information to the United States Probation Office and the Court, (b) correct any and all factual misstatements relating to the Court's Sentencing Guidelines calculations and determination

of sentence, and (c) argue on appeal and collateral review that the Court's Sentencing Guidelines calculations and the sentence it chooses to impose are not error, although each party agrees to maintain its view that the calculations in paragraph 13 are consistent with the facts of this case. While this paragraph permits both the USAO and defendant to submit full and complete factual information to the United States Probation Office and the Court, even if that factual information may be viewed as inconsistent with the facts agreed to in this agreement, this paragraph does not affect defendant's and the USAO's obligations not to contest the facts agreed to in this agreement.

29. Defendant understands that even if the Court ignores any sentencing recommendation, finds facts or reaches conclusions different from those agreed to, and/or imposes any sentence up to the maximum established by statute, defendant cannot, for that reason, withdraw defendant's guilty pleas, and defendant will remain bound to fulfill all defendant's obligations under this agreement. Defendant understands that no one – not the prosecutor, defendant's attorney, or the Court – can make a binding prediction or promise regarding the sentence defendant will receive, except that it will be within the statutory maximum.

NO ADDITIONAL AGREEMENTS

30. Defendant understands that, except as set forth herein, there are no promises, understandings, or agreements between the USAO and defendant or defendant's attorney, and that no additional promise, understanding, or agreement may be entered into unless in a writing signed by all parties or on the record in court.

PLEA AGREEMENT PART OF
THE GUILTY PLEA HEARING

31. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

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

EILEEN M. DECKER

United States Attorney

/s/ <u>Lisa E. Feldman</u>	<u>11-16-15</u>
LISA E. FELDMAN/DAVID P. KOWAL	Date
Assistant United States Attorneys	

/s/ <u>Faisal Ashraf</u>	<u>11/14/15</u>
FAISAL ASHRAF	Date
Defendant	

/s/ Joel Androphy Nov. 14, 2015
 JOEL ANDROPHY/JAMES RIDDET Date

Attorneys for Defendant
 FAISAL ASHRAF

CERTIFICATION OF DEFENDANT

I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it. with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charges and wish to take advantage of the promises set forth in this agreement, and not for any other reason.

/s/ Faisal Ashraf 11/14/15
 FAISAL ASHRAF Date
 Defendant

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am FAISAL ASHRAF's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client's entry of guilty pleas pursuant to this agreement.

/s/ Joel Androphy 11-14-15
JOEL ANDROPHY/JAMES RIDDET Date
Attorneys for Defendant
FAISAL ASHRAF

[Attachment Omitted]
