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United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
KEVIN FREELS,  
  
Defendant.

CASE NO. 2:15-cr-126 MCE  
  
PLEA AGREEMENT  
  
DATE: JULY 30, 2015  
TIME: 9:00 A.M.  
COURT: Hon. Morrison C. England, Jr.

**I. INTRODUCTION**

**A. Scope of Agreement.**

The Superseding Information in this case charges the defendant with a violation of Title 18, United States Code, Section 1955 – Conducting an Illegal Gambling Business. This document contains the complete plea agreement between the United States Attorney’s Office for the Eastern District of California (the “government”) and the defendant regarding this case. This plea agreement is limited to the United States Attorney’s Office for the Eastern District of California and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities.

**B. Rule 11(c)(1)(C) Specific Sentence Agreement.**

The government and the defendant agree that a specific sentence, set forth below in paragraph VI.C., would be appropriate in this case. Consequently, this plea agreement is being offered to the Court

1 pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure.

2 Under the provisions of Rule 11(c)(3), the Court may accept or reject the plea agreement, or may  
3 defer its decision as to the acceptance or rejection until there has been an opportunity to consider the  
4 presentence report. If the Court accepts the plea agreement, the Court will inform the defendant that it  
5 will embody in the judgment and sentence the disposition provided for in this plea agreement. If the  
6 Court rejects this plea agreement, the Court shall so advise the defendant, allow the defendant the  
7 opportunity to withdraw his plea, and advise him that if he persists in a guilty plea the disposition of the  
8 case may be less favorable to him than is contemplated by this plea agreement.

9 **II. DEFENDANT'S OBLIGATIONS**

10 **A. Guilty Plea.**

11 The defendant will plead guilty to Count One of the Superseding Information – Conducting an  
12 Illegal Gambling Business in violation of Title 18, United States Code, Section 1955. The defendant  
13 agrees that he is in fact guilty of these charges and that the facts set forth in the Factual Basis for Plea  
14 attached hereto as Exhibit A are accurate.

15 The defendant agrees that this plea agreement will be filed with the Court and become a part of  
16 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his  
17 plea should the Court not follow the government's sentencing recommendations.

18 The defendant agrees that the statements made by him in signing this Agreement, including the  
19 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by  
20 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a  
21 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)  
22 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this  
23 Agreement generally.

24 **1. Waiver of Indictment:**

25 The defendant acknowledges that under the United States Constitution he is entitled to be  
26 indicted by a grand jury on the charges to which he is pleading guilty and that pursuant to Fed.R.Crim.P.  
27 7(b) he agrees to waive any and all rights he has to being prosecuted by way of indictment to the charges  
28 set forth in the information. The defendant agrees that at a time set by the Court, he will sign a written

1 waiver of prosecution by Indictment and consent to proceed by Information rather than by Indictment.

2           2.       Package Agreement:

3           The defendant acknowledges and understands that the plea offer made to him here by the  
4 government is a “package offer.” That is, the defendant understands that the offer made to him is  
5 conditioned on co-defendant Capital Sweepstakes Systems, Inc. pleading guilty according to the terms  
6 of its respective plea offer. The defendant understands that if this co-defendant declines, refuses or fails  
7 to plead guilty according to its respective offer, then, at the option of the government, the defendant will  
8 not be allowed to enter a plea of guilty to the offer made to him by the government. Additionally, if co-  
9 defendant Capital Sweepstakes Systems, Inc. fails or refuses to enter its plea according to its respective  
10 offer and the defendant has already entered his plea, then this plea agreement is voidable at the option of  
11 the government. In its sole discretion, the government has the ability to withdraw from the plea  
12 agreement with the defendant and pursue the original charges as to this defendant. However, the  
13 defendant’s waiver of his rights under Rule 11(f) and Fed. R. Evid. 410, as set forth in Section II.A  
14 herein, will not operate.

15           Recognizing that this is a package offer, the defendant confirms that he has not been  
16 threatened, pressured, or coerced by any other person or entity, including the co-defendant, to enter into  
17 this plea agreement. The defendant also confirms that he enters into this plea agreement voluntarily  
18 because he is in fact guilty of the offense(s) to which he is pleading guilty.

19           **B.       Restitution.**

20           The parties agree that neither mandatory nor voluntary restitution is warranted in this case.

21           **C.       Fine.**

22           In view of the substantial criminal forfeiture agreed upon by the parties as to the co-defendant  
23 Capital Sweepstakes Systems, Inc., the government agrees not to recommend a fine.

24           **D.       Special Assessment.**

25           The defendant agrees to pay a special assessment of \$100 at the time of sentencing by delivering  
26 a check or money order payable to the United States District Court to the United States Probation Office  
27 immediately before the sentencing hearing. The defendant understands that this plea agreement is  
28 voidable at the option of the government if he fails to pay the assessment prior to that hearing.

1           **E.     Violation of Plea Agreement by Defendant/Withdrawal of Plea(s).**

2           If the defendant, cooperating or not, violates this plea agreement in any way, withdraws his plea,  
3 or tries to withdraw his plea, this plea agreement is voidable at the option of the government. The  
4 government will no longer be bound by its representations to the defendant concerning the limits on  
5 criminal prosecution and sentencing as set forth herein. One way a cooperating defendant violates the  
6 plea agreement is to commit any crime or provide any statement or testimony which proves to be  
7 knowingly false, misleading, or materially incomplete. Any post-plea conduct by a defendant  
8 constituting obstruction of justice will also be a violation of the agreement. The determination whether  
9 the defendant has violated the plea agreement will be under a probable cause standard.

10          If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the  
11 government shall have the right (1) to prosecute the defendant on any of the counts to which he pleaded  
12 guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file  
13 any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter  
14 be subject to prosecution for any federal criminal violation of which the government has knowledge,  
15 including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these  
16 options is solely in the discretion of the United States Attorney's Office.

17          By signing this plea agreement, the defendant agrees to waive any objections, motions, and  
18 defenses that the defendant might have to the government's decision. Any prosecutions that are not  
19 time-barred by the applicable statute of limitations as of the date of this plea agreement may be  
20 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of  
21 limitations between the signing of this plea agreement and the commencement of any such prosecutions.  
22 The defendant agrees not to raise any objections based on the passage of time with respect to such  
23 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy  
24 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as  
25 of the date of this plea agreement.

26          In addition, and unless any withdrawal from this plea agreement is pursuant to Rule 11(d)(2)(A),  
27 (1) all statements made by the defendant to the government or other designated law enforcement agents,  
28 or any testimony given by the defendant before a grand jury or other tribunal, whether before or after

1 this plea agreement, shall be admissible in evidence in any criminal, civil, or administrative proceedings  
2 hereafter brought against the defendant; and (2) the defendant shall assert no claim under the United  
3 States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the  
4 Federal Rules of Evidence, or any other federal rule, that statements made by the defendant before or  
5 after this plea agreement, or any leads derived therefrom, should be suppressed. By signing this plea  
6 agreement, the defendant waives any and all rights in the foregoing respects.

### 7 **III. THE GOVERNMENT'S OBLIGATIONS**

#### 8 **A. No Further Charges.**

9 The government agrees that no further charges will be filed against the defendant for any offense  
10 related to the conduct that is the subject of the investigation that gives rise to this Plea Agreement except  
11 if this agreement is voided as set forth herein, or as provided in paragraphs II.E (Violation of Plea  
12 Agreement by Defendant/Withdrawal of Plea), and VII.B (Waiver of Appeal and Collateral Attack)  
13 herein.

#### 14 **B. Recommendations.**

##### 15 1. Acceptance of Responsibility.

16 The government will recommend a two-level reduction (if the offense level is less than  
17 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if  
18 the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §  
19 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of  
20 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging  
21 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the  
22 preparation of the pre-sentence report or during the sentencing proceeding.

##### 23 2. Conditions of Probation

24 The government reserves the right to argue for two conditions of probation: (1) a period of home  
25 confinement not greater than six months; and (2) community service without limitation as to duration. If  
26 the government argues for a home confinement condition, it agrees to argue for home confinement "not  
27 to exceed" a specified period, *e.g.*, for a period of home confinement not to exceed six months. The  
28 government agrees not to argue or recommend that any confinement be served in the custody of a third

1 party, to include community confinement or intermittent confinement.

2 **C. Use of Information for Sentencing.**

3 The government is free to provide full and accurate information to the Court and Probation,  
4 including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate  
5 statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also  
6 understands and agrees that nothing in this Plea Agreement bars the government from defending on  
7 appeal or collateral review any sentence that the Court may impose.

8 **IV. ELEMENTS OF THE OFFENSE**

9 At a trial, the government would have to prove beyond a reasonable doubt the following  
10 elements of the offense to which the defendant is pleading guilty, Conducting an Illegal Gambling  
11 Business:

12 1. First, the defendant conducted, financed, managed, supervised, directed or owned all or part  
13 of a gambling business; and

14 2. Second, that such gambling business:

15 a. Violated the laws of the state(s) in which it was conducted including California and  
16 elsewhere;

17 At all times relevant to the Information, the Capital Sweepstakes products and services  
18 described above violated California Penal Code § 330b, which makes it unlawful for  
19 any person to sell, rent or lease any slot machine or device. For purposes of that  
20 section, “slot machine or device” means a machine, apparatus or device that is  
21 adapted or may readily be converted for use in a way that, as a result of the insertion  
22 of any piece of money or coin or other object, or by any other means, the machine or  
23 device is caused to operate or may be operated, and by reason of any element of  
24 hazard or chance or other outcome of operation unpredictable by him or her, the user  
25 may receive or become involved entitled to receive any piece of money, credit,  
26 allowance or thing of value[.]”

27 b. Involved five or more persons who conducted, financed, managed, supervised,  
28 directed or owned all or part of said illegal gambling business; and

1 c. Has been or remained in substantially continuous operation for more than 30 days or  
2 had a gross revenue of \$2,000 or more on any single day.

3 The defendant fully understands the nature and elements of the crimes charged information to  
4 which it is pleading guilty, together with the possible defenses thereto, and has discussed them with its  
5 attorney.

6 **V. MAXIMUM SENTENCE**

7 **A. Maximum Penalty.**

8 The maximum sentence that the Court can impose is five years of incarceration, a fine of  
9 \$250,000, a three year period of supervised release and a special assessment of \$100.

10 **B. Violations of Supervised Release.**

11 The defendant understands that if he violates a condition of probation or supervised release at  
12 any time during the term of probation or supervised release, the Court may revoke the term of probation  
13 or supervised release and require the defendant to serve up to two additional years imprisonment.

14 **VI. SENTENCING DETERMINATION**

15 **A. Statutory Authority.**

16 The defendant understands that the Court must consult the Federal Sentencing Guidelines and  
17 must take them into account when determining a final sentence. The defendant understands that the  
18 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the  
19 Sentencing Guidelines and must take them into account when determining a final sentence. The  
20 defendant further understands that the Court will consider whether there is a basis for departure from the  
21 guideline sentencing range (either above or below the guideline sentencing range) because there exists  
22 an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into  
23 consideration by the Sentencing Commission in formulating the Guidelines. The defendant further  
24 understands that the Court, after consultation and consideration of the Sentencing Guidelines, must  
25 impose a sentence that is reasonable in light of the factors set forth in 18 U.S.C. § 3553(a).

26 **B. Estimated Guideline Calculation.**

27 The government and the defendant agree that the following is their present best estimate of the  
28 sentencing guidelines variables. These estimates shall not be binding on the Court, the Probation Office,

or the parties:

1. Base Offense Level: The parties agree that the base offense level is 12, pursuant to 2E3.1(a)(1)
2. Role in the Offense Adjustment: The parties agree that the defendant qualifies as an organizer or leader of the criminal activity, and that a four level increase applies.
3. Acceptance of Responsibility: See paragraph III.B.1 above
4. Criminal History: Category I.
5. Sentencing Range: Assuming the defendant qualifies for the full reduction for acceptance of responsibility, the parties estimate that the guidelines range is 12-18 months in Zone C of the sentencing table. These guidelines estimates are not binding on the Court or the parties.

**C. Specific Sentence Agreement.**

Pursuant to Rule 11(c)(1)(C), the parties agree to the following provisions of a sentence, which provisions shall bind the Court if it accepts the plea:

1. One year of probation
2. While the Court may limit the defendant's involvement in bingo or sweepstakes activities, the Court may not preclude the defendant from participating in those activities pursuant to a valid gaming license or for or in support of persons or entities who hold a valid gaming license.
3. The Court may not impose a judgment of forfeiture against this defendant, and any forfeiture that might otherwise be required will be satisfied through the Capital Sweepstakes Systems, Inc. plea agreement.

**VII. WAIVERS**

**A. Waiver of Constitutional Rights.**

The defendant understands that by pleading guilty he is waiving the following constitutional rights: (a) to plead not guilty and to persist in that plea if already made; (b) to be tried by a jury; (c) to be assisted at trial by an attorney, who would be appointed if necessary; (d) to subpoena witnesses to testify on his behalf; (e) to confront and cross-examine witnesses against him; and (f) not to be compelled to incriminate himself.

**B. Waiver of Appeal and Collateral Attack.**

The defendant understands that the law gives the defendant a right to appeal his guilty plea, conviction, and sentence. The defendant agrees as part of his plea, however, to give up the right to appeal the guilty plea, conviction, and the sentence imposed in this case. The defendant specifically



1 gives up the right to appeal any order of restitution the Court may impose.

2       Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if  
3 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the  
4 statutory maximum; (2) this plea agreement is accepted by the Court but is inconsistent with the parties'  
5 Rule 11(c)(1)(C) sentencing terms; (3) the Court imposes a condition of probation that is unauthorized  
6 by statute or otherwise contrary to law; or (4) the government appeals. The defendant understands that  
7 these circumstances occur infrequently and that in almost all cases this Agreement constitutes a  
8 complete waiver of all appellate rights.

9       In addition, regardless of the sentence the defendant receives, the defendant also gives up any  
10 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any  
11 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims.

12       Notwithstanding the agreement in paragraph III.A above that the government will bring no  
13 further charges against the defendant, if the defendant ever attempts to vacate his plea, dismiss the  
14 underlying charges, or modify or set aside his sentence on any of the counts to which he is pleading  
15 guilty, the government shall have the rights set forth in Section II.E herein.

16       **C.     Waiver of Attorneys' Fees and Costs.**

17       The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-  
18 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the  
19 investigation and prosecution of all charges in the above-captioned matter and of any related allegations  
20 (including without limitation any charges to be dismissed pursuant to this plea agreement and any  
21 charges previously dismissed).

22                               **VIII.     ENTIRE PLEA AGREEMENT**

23       Other than this plea agreement, no agreement, understanding, promise, or condition between the  
24 government and the defendant exists, nor will such agreement, understanding, promise, or condition  
25 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and  
26 counsel for the United States.

IX. APPROVALS AND SIGNATURES

A. Defense Counsel.

I have read this plea agreement and have discussed it fully with my client. The plea agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this plea agreement.

Dated:

JOHN PANNETON  
Attorney for Defendant

B. Defendant:

I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my case. No other promises or inducements have been made to me, other than those contained in this plea agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement. Finally, I am satisfied with the representation of my attorney in this case.

Dated:

KEVIN FREELS  
Defendant

C. Attorney for United States:

I accept and agree to this plea agreement on behalf of the government.

Dated:

BENJAMIN B. WAGNER  
United States Attorney

JARED C. DOLAN  
Assistant United States Attorney

EXHIBIT "A"

Factual Basis for Plea

If this case proceeded to trial, the United States would prove the following beyond a reasonable doubt:

From at least January 17, 2013 through approximately September 17, 2014, Capital Sweepstakes Systems, Inc. ("Capital Sweepstakes") operated continuously as a business located in Loomis, California. Capital Sweepstakes provided complete software, and in some cases additional hardware, systems for owners of what are commonly known as "internet sweepstakes cafes" and other similar storefront locations in the State and Eastern District of California and elsewhere. The service included the delivery and installation of internet sweepstakes terminals, the sweepstakes server, the point of sale computer; training on the operation of all systems; maintenance on all systems; and access to the maintenance help telephone line. Capital Sweepstakes did not charge fees for its services but instead earned a percentage of the profit made at each internet sweepstakes café location.

During the time-period specified above, Kevin Freels was the President of a software company that provided sweepstakes software used by Capital Sweepstakes. Kevin Freels had an office located at the same address in Loomis as the listed location for Capital Sweepstakes. Kevin Freels, along with others assisted in overseeing operations and financial dealings at both Capital Sweepstakes and his software company. At all times relevant to the Information, Capital Sweepstakes employed five or more persons to assist it in conducting, managing, supervising, directing, and/or owning the business. At all times relevant to the Information, Capital Sweepstakes derived daily gross revenues in excess of \$2,000. During the period specified, Capital Sweepstakes took in revenues of at least \$1,600,000 from its operations. Kevin Freels received a significant portion of revenues generated by Capital Sweepstakes.

The Capital Sweepstakes terminals allowed customers to use sweepstakes entries, initially loaded on a white plastic card with a magnetic strip, which card was activated by an employee at the location. Later, the Capital Sweepstakes' terminals used pin numbers. When the customer swiped the card at the terminal, the customer could play various matching games on a video screen and potentially win instant cash prizes. To continue to play the internet sweepstakes terminal the customer could purchase more products or services to receive more sweepstakes entries. The computer terminals used by customers at the internet cafes to reveal their sweepstakes results had no random number generators. Rather, the results were predetermined through the management terminal by the Capital Sweepstakes software. The sweepstakes terminals did, however, provide an entertaining way for customers to reveal the next available sweepstakes entry in the electronic stack of pre-determined entries. Customers could play as many as 20 or more different games, including games with names such as Hot Luck Keno, Tropical Treasures, and Dreamcatcher, Lucky Puppy, and Luck of the Irish.

The internet cafés utilizing Capital Sweepstakes' software offered sweepstakes entries to customers whenever they made a purchase of internet time or other products. According to the sweepstakes rules, customers could also obtain a limited number of sweepstakes entries without purchasing any goods or services from the internet café.

In some circumstances, a customer already had opened an account at a particular location. This account establishment occurred by providing the store employee an amount of money and, in most cases, providing a form of identification, such as a driver's license. The customer was given either a printed out receipt with a unique code or a card and a login. The customer could reveal the results of a sweepstakes entry either at the point of sale, by obtaining a printout from the cashier, or at the internet

terminal. Exactly the same results were displayed for a specified sweepstakes entry whether the customer chose to have the results displayed in paper format at the point of sale terminal or in electronic format at an internet terminal. If a customer chose to reveal the results at an internet terminal, the account and play would then be established on a computer terminal, and tracked through a server operated and controlled by Capital Sweepstakes. The customer logged into the internet sweepstakes terminal using the code or login obtained at the point of sale terminal. When the customer stopped play, the customer could go to the cashier to receive instant cash prizes which were won during play of the sweepstakes. The customer was only able to receive money from the location from which the account was opened. The location would later receive an invoice from Capital Sweepstakes for a previously agreed upon percentage of its profits. Capital Sweepstakes was able to send these invoices to the locations because Capital Sweepstakes tracked the sweepstakes activity on their servers, which were connected to the internet sweepstakes cafés.

Locations utilizing Capital Sweepstakes products and services included but were not limited to the following:

1. Mr. M's Internet and Café, 7741 Fair Oaks Boulevard, Sacramento, California
2. Compu-More, 906 Sacramento Avenue, West Sacramento, California
3. Funsweeps, 2902 Auburn Boulevard, Sacramento, California
4. Bullseye Internet Center, 402 Colusa Avenue, Unit A, Yuba City, California
5. American Legion Post 447, 720 Santiago Avenue, Sacramento
6. American Legion Post 14770, 14770 Austin Road, Clearlake, California
7. Metis Learning Center, 7240 Southgate Drive, Sacramento, California
8. 10108 North Lower Sacramento Road, Stockton, California
9. The Network Center, 29 North Aurora Street, Stockton, California
10. 1220 West Freemont Street, Stockton, California
11. ACCESS, 6831 Savings Place, Suite 205, Sacramento, California

At each of these locations, Capital Sweepstakes terminals and/or software were installed and used to participate in the sweepstakes. Some of these locations also licensed sweepstakes software from other providers. As discussed above, these gambling-themed games resemble slot machines and also make audible sounds to resemble casino-style slot machines. While the products at these locations generally consisted of internet time, many times patrons of these establishments chose simply to play the sweepstakes games rather than use the internet time they purchased.