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NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

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10  
11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION

14 UNITED STATES OF AMERICA, ) NO. CR 11-00456 EJD  
15 Plaintiff, ) PLEA AGREEMENT  
16 v. )  
17 SANFORD WALLACE, )  
18 Defendant. )

19  
20 I, Sanford Wallace, and the United States Attorney's Office for the Northern District of  
21 California (hereafter "the government") enter into this written plea agreement (the "Agreement")  
22 pursuant to Rule 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to Count Three of the captioned Indictment charging me with Fraud  
25 and Related Activity in Connection with Electronic Mail, in violation of 18 U.S.C. §§ 1037(a)(1) and  
26 (b)(2)(A). I agree that the elements of the offense are as follows: (1) I knowingly accessed a protected  
27 computer (that is, a computer used in or affecting interstate or foreign commerce or communication); (2)  
28 I did so without authorization; and (3) I intentionally initiated the transmission of multiple commercial

1 electronic mail messages from or through such computer. I agree that the maximum penalties are as  
2 follows:

- 3 a. Maximum prison term 3 years
- 4 b. Maximum fine \$250,000
- 5 c. Maximum supervised release term 1 year
- 6 d. Restitution To Be Determined by the Court
- 7 e. Mandatory special assessment \$100

8 In addition, I agree to plead guilty to Count Ten of the captioned Indictment charging me with  
9 Criminal Contempt, in violation of 18 U.S.C. § 401(3). I agree that the elements of the offense are as  
10 follows: (1) I willfully and knowingly disobeyed and resisted a lawful order; (2) of a Court of the United  
11 States. I agree that the maximum penalties are as follows:

- 12 a. Maximum prison term Determined by the Court
- 13 b. Maximum fine Determined by the Court
- 14 c. Maximum supervised release term Determined by the Court
- 15 d. Mandatory special assessment \$100

16 2. I agree that I am guilty of the offenses to which I am pleading guilty, and I agree that the  
17 following facts are true:

18 From approximately November 2008 through March 2009, I developed and executed a plan to  
19 use deception to obtain Facebook users' login credentials in order to gain access to their accounts, and  
20 send to them commercial electronic mail messages (hereinafter "messages"). As a result of my plan, I  
21 accessed approximately 500,000 Facebook accounts, and sent more than 27 million commercial  
22 electronic messages through Facebook's servers. Facebook is a social networking site headquartered in  
23 Menlo Park, California. I understand that at all times relevant to executing my plan, Facebook's  
24 computer network was used in and affecting interstate and foreign commerce and communication, and  
25 constituted a "protected" computer pursuant to 18 U.S.C. § 1030(e)(2)(B).

26 In order to execute my plan, on approximately November 4, 2008, I opened a fictitious Facebook  
27 account in the name of "David Frederix" ("Frederix account") in order to test my messages. I also  
28 created an automated scripting process that was designed to sign into a Facebook user's account, retrieve

1 a list of all of the user's friends, and then send a message to each of the user's friends' Facebook  
2 accounts. I tested my automated script between the Frederix account and a Facebook account that I  
3 opened using my true name ("Wallace account") before launching it through Facebook's servers. The  
4 automated script was designed to trick legitimate Facebook account holders into accessing the website  
5 listed in the message that was purportedly from a Facebook friend. Once the user entered his or her  
6 information, the user would be redirected to an affiliate website. I earned money for directing traffic to  
7 that website. I collected and stored users' email addresses and passwords in order to continue to send  
8 spam messages. I attempted to hide my identity as the originator of these messages by using third-party  
9 "proxy" computers and registering thousands of domain names using fictitious names or names  
10 belonging to other people who did not give me their consent to do so. For example, on May 21, 2008, I  
11 opened an account at the domain registrar Moniker Online Service under the name of an individual  
12 identified as "A.A." in order to register over 1,000 domain names. "A.A." did not give me permission to  
13 use his or her name to register the domain names.

14 I accessed thousands of Facebook accounts through use of my deceptive plan in order to send  
15 messages on at least three occasions. First, on November 4, 2008, I sent a test message using an  
16 automated scripting process from the Wallace account to the Frederix account. The following morning, I  
17 sent several other test messages between the Wallace and Frederix accounts. Once the test messages  
18 were successful, I initiated the transmission of more than 128,883 messages to Facebook users with the  
19 message "LMAO so funny. GayestProfile.com look at that." The messages were sent through  
20 Facebook's computers between 10:20 a.m. on November 5, 2008 through 12:28 a.m. on November 6,  
21 2008. If a Facebook user visited the domain "GayestProfile.com," he or she was first required to enter  
22 his or her email address and create a password before he or she could fully view the site. Once a user  
23 entered his or her information, the message would be sent to all of the user's friends.

24 Second, as detailed in Count Three of the Indictment, on December 28, 2008, between 12:04  
25 a.m. and 11:41 p.m., I used over 143 third-party "proxy" computers and over 1,500 domain names to  
26 initiate the transmission of 299,837 messages through Facebook's servers. The messages were in the  
27 form of private messages from various compromised Facebook accounts. The messages varied from  
28 "You should see this is your pix are all over groanhop-com-go there," to "How did your pictures get

1 uploaded on spoilgiggle-com-go there.” Similar to the November 5, 2008 plan, if a Facebook user  
2 visited any one of the 1,500 domains contained in the message, he or she was prompted to enter his or  
3 her email address and create a password before viewing the website. The users were redirected to  
4 affiliate websites where I earned money for directing people to the website. I also stored the users’ email  
5 addresses and passwords on a server that I leased from the web hosting provider ServInt Internet  
6 Services.

7 Third, on February 17, 2009, between 3:42 a.m. and 12:13 p.m., I initiated the transmission of  
8 126,173 messages through Facebook’s servers. By using over 50 third-party proxy computers, I  
9 attempted to hide my identity as the initiator of these messages. The messages stated “hey you’ll love  
10 this ‘stalker’ ecard haha it’s at StalkingFriends.com,” I registered the domain name  
11 “StalkingFriends.com” using the fictitious names of “Laura Frederix” and “Victoria David.” I agree that  
12 the loss to Facebook for each period of spamming discussed above was over \$5,000 for a loss to  
13 Facebook of more than \$15,000. I agree that the government can argue that the loss is more than  
14 \$400,000 but less \$1,000,000.

15 Finally, on February 24, 2009, Facebook filed a lawsuit against me in United States District  
16 Court for the Northern District of California alleging violations of the CAN-SPAM Act of 2003, the  
17 Computer Fraud and Abuse Act, and California’s Anti-Phishing and Computer Data Access and Fraud  
18 Acts. (*Facebook, Inc. v. Wallace, et al*, No. C-09-00798-JF). On March 2, 2009, Judge Fogel issued a  
19 temporary restraining order prohibiting me from accessing or attempting to access Facebook in any  
20 manner whatsoever, including sending spam to Facebook users, accessing or attempting to access  
21 Facebook’s website, and creating or maintaining a Facebook account. On the same day, I was served  
22 with, among other legal documents, a copy of the temporary restraining order signed by Judge Fogel.  
23 On March 24, 2009, Judge Fogel issued an order granting a preliminary injunction prohibiting me from  
24 accessing Facebook, and on September 18, 2009, he issued a permanent injunction.

25 I subsequently willfully and knowingly disobeyed Judge Fogel’s order, as alleged in Count 10,  
26 on April 17, 2009 when I logged into my Facebook account while aboard a Virgin Airlines flight from  
27 Las Vegas, Nevada, to New York, New York.

28 3. I agree to give up all rights that I would have if I chose to proceed to trial, including the

1 rights to a jury trial with the assistance of any attorney; to confront and cross-examine government  
2 witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth  
3 Amendment claims; to any further discovery from the government; and to pursue any affirmative  
4 defenses and present evidence.

5 4. I agree to give up my right to appeal my conviction, the judgment, and orders of the  
6 Court. I also agree to waive any right I have to appeal any aspect of my sentence, including any orders  
7 relating to forfeiture and or restitution.

8 5. I agree not to file any collateral attack on my conviction or sentence, including a petition  
9 under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, except that I reserve my right to claim that my counsel was  
10 ineffective in connection with the negotiation of this Agreement or the entry of my guilty plea. I also  
11 agree not to seek relief under 18 U.S.C. § 3582.

12 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is entered. I  
13 understand that by entering into this Agreement: (a) I agree that the facts set forth in Paragraph 2 of this  
14 Agreement shall be admissible against me under Fed. R. Evid. 801(d)(2)(A) in any subsequent  
15 proceeding, including at trial, in the event I violate any of the terms of this Agreement, and (b) I  
16 expressly waive any and all rights under Fed. R. Crim. 11(f) and Fed. R. Evid. 410 with regard to the  
17 facts set forth in Paragraph 2 of this Agreement in such subsequent proceeding. I understand that the  
18 government will not preserve any physical evidence obtained in this case.

19 7. I understand that the Court must consult the United States Sentencing Guidelines and  
20 take them into account when sentencing, together with the factors set forth in 18 U.S.C. § 3553(a). I also  
21 understand that the Court is not bound by the Guidelines calculations below, the Court may conclude  
22 that a higher Guidelines range applies to me, and, if it does, I will not be entitled, nor will I ask to  
23 withdraw my guilty pleas. I agree that regardless of the sentence that the Court imposes on me, I will not  
24 be entitled, nor will I ask, to withdraw my guilty pleas. I also agree that the Sentencing Guidelines  
25 offense level will be calculated as follows and that I will not ask for any other adjustment to or reduction  
26 in the offense level or for a downward departure from the Guidelines range as determined by the Court,  
27 except that I reserve my right to argue that the loss attributable to my offense did not exceed \$30,000, as  
28 set forth in subparagraph b, below. I also reserve my right to argue for a sentencing variance pursuant to

1 the factors in 18 U.S.C. § 3553(a). I understand that the government reserves its right to oppose any  
 2 such variance request. The parties have reached no agreement regarding my Criminal History Category.

3 Count Three: Fraud and Related Activity in Connection with Electronic Mail (Count One)

4	a.	Base Offense Level: (U.S.S.G. § 2B1.1(a)(2))	6
5			
6	b.	Specific Offense Characteristics	
7		Amount of Loss: The Government will argue the loss is more than \$400,000 but less than \$1 million pursuant to U.S.S.G. §2B1.1(b)(1)(H)	+14
8			
9		The Defendant will argue that loss is more than \$10,000 but less than \$30,000 pursuant to U.S.S.G. § 2B1.1(b)(1)(C)	+4
10			
11		(U.S.S.G. § 2B1.1(b)(2)(A)(ii) - Offense committed through mass marketing)	+2
12			
13		(U.S.S.G. § 2B1.1(b)(6) - Convicted of 18 U.S.C. § 1037)	+2
14	c.	Offense Level:	24 or 14

15 Count Ten – Criminal Contempt (Group Two)

16	d.	Base Offense Level: (U.S.S.G. § 2J1.1)	14
17			
18	e.	Offense Level:	14

19 Combined Offense Level

20	f.	U.S.S.G. § 3D1.4(c) If Government Prevails on Loss Total Units = 0	No increase
21			
22		U.S.S.G. § 3D1.4(a) If Defendant Prevails on Loss Total Units = 1	No increase
23			
24	g.	Acceptance of Responsibility: (If I meet the requirements of U.S.S.G. § 3E1.1, through sentencing I may be entitled to a three-level reduction.)	-3
25			
26		If Court Adopts Defendant's Guidelines Calculation	-2
27			
28	h.	Adjusted Offense Level: Government's Recommendation: Defendant's Recommendation	21 12

1           8.     I agree that regardless of any other provision of this Agreement, the government may and  
2 will provide the Court and the Probation Office with all information relevant to the charged offense and  
3 the sentencing decision. I agree that, based on the nature of the offense, the Court should impose the  
4 following special condition of supervised release which is reasonably related to deterrence and  
5 rehabilitation:

6                   Special Condition (Searches)

7                   The defendant shall submit his person, residence, office, vehicle, or any  
8                   property under his control to a search. Such a search shall be conducted by a United  
9                   States Probation Officer or any federal, state, or local law enforcement officer at any time  
10                  with or without suspicion. Failure to submit to such a search may be grounds for  
11                  revocation; the defendant shall warn any residents that the premises may be subject to  
12                  searches.

13           9.     I agree to pay restitution for all the losses caused by all the schemes or offenses with  
14 which I was charged in this case, and I agree that the amount of restitution will not be limited to the loss  
15 attributable to the counts to which I am pleading guilty, pursuant to 18 U.S.C. § 3663(a)(3). I agree that  
16 any fine, forfeiture, or restitution imposed by the Court against me will be immediately due and payable  
17 and subject to immediate collection by the government and I understand that the government may seek  
18 immediate collection of the entire fine, forfeiture, or restitution from any assets without regard to any  
19 schedule of payments imposed by the Court or established by the Probation Office. I agree that I will  
20 make a good-faith effort to pay any fine, forfeiture, or restitution I am ordered to pay. Before or after  
21 sentencing, I will upon request of the Court, the government, or the Probation Office, provide accurate  
22 and complete financial information, submit sworn statements and give depositions under oath  
23 concerning my assets and my ability to pay, surrender assets I obtained as a result of my crimes, and  
24 release funds and property under my control in order to pay any fine, forfeiture, or restitution. I agree to  
25 pay the special assessment at the time of sentencing.

26           10.    I agree not to commit or attempt to commit any crimes before sentence is imposed or  
27 before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release; not  
28 to intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the  
government; and not to fail to comply with any of the other promises I have made in this Agreement. I  
agree that if I fail to comply with any promises I have made in this Agreement, then the government will

1 be released from all of its promises in this Agreement, including those set forth in the Government's  
2 Promises Section below, but I will not be released from my guilty plea.

3 11. I agree that this Agreement contains all of the promises and agreements between the  
4 government and me, and I will not claim otherwise in the future. No modification of this Agreement  
5 shall be effective unless it is in writing and signed by all parties.

6 12. I agree that the Agreement binds the U.S. Attorney's Office for the Northern District of  
7 California only, and does not bind any other federal, state, or local agency.

8 The Government's Promises

9 13. The government agrees to move to dismiss any open charges pending against the  
10 defendant in the captioned Indictment at the time of sentencing.

11 14. The government agrees not to file any additional charges against the defendant that could  
12 be filed as a result of the investigation that led to the captioned Indictment.

13 15. The government agrees to recommend the Guideline calculations set out above, unless  
14 the defendant violates the terms of the Agreement above or fails to accept responsibility.

15 The Defendant's Affirmations

16 16. I confirm that I have had adequate time to discuss this case, the evidence, and the  
17 Agreement with my attorney and that my attorney has provided me with all the legal advice that I  
18 requested.

19 17. I confirm that the while I considered signing this Agreement, and at the time I signed it, I  
20 was not under the influence of any alcohol, drug, or medicine that would impair my ability to understand  
21 the Agreement.

22 //

23 //

24 //

25 //

26 //

27 //

28 //



1 18. I confirm that my decision to enter a guilty plea is made knowing the charges that have  
2 been brought against me, any possible defense, and the benefits and possible detriments of proceeding to  
3 trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or  
4 threatened me to enter into this Agreement.

5  
6 Dated:

8/24/15

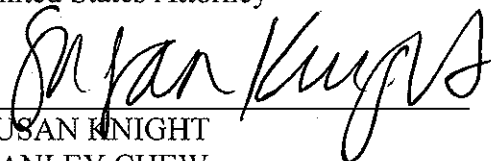


SANFORD WALLACE  
Defendant

MELINDA HAAG  
United States Attorney

7  
8  
9  
10 Dated:

8/24/15



SUSAN KNIGHT  
HANLEY CHEW  
Assistant United States Attorneys

11  
12  
13  
14  
15 19. I have fully explained to my client all the rights that a criminal defendant has and all the  
16 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all  
17 the rights my client is giving up by pleading guilty, and, based on the information now known to me, my  
18 client's decision to plead guilty is knowing and voluntary.

19 Dated:

8.24.15



WM. MICHAEL WHELAN, JR.  
Attorney for Defendant Wallace