

FILED

2016 MAR 22 AM 11:36

CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

EILEEN M. DECKER
United States Attorney
PATRICIA A. DONAHUE
Assistant United States Attorney
Chief, National Security Division
ANTHONY J. LEWIS (Cal. Bar No. 231825)
Assistant United States Attorney
Deputy Chief, Terrorism and Export Crimes Section
1500 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-1786
Facsimile: (213) 894-7631
E-mail: anthony.lewis@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. SA CR 14-131

Plaintiff,

PLEA AGREEMENT FOR DEFENDANT
SU BIN

v.

SU BIN,
aka "Stephen Su,"
aka "Stephen Subin,"
aka "Steven Subin,"

Defendant.

1. This constitutes the plea agreement between Su Bin ("defendant") and the United States Attorney's Office for the Central District of California (the "USAO") in the above-captioned case. 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:

1 a. Give up the right to indictment by a grand jury and,
2 at the earliest opportunity requested by the USAO and provided by the
3 Court, appear and plead guilty to a single-count information in the
4 form attached to this agreement as Exhibit A or a substantially
5 similar form, which charges defendant with a conspiracy in violation
6 of Title 18, United States Code, Section 371.

7 b. Not contest facts agreed to in this agreement.

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

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

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

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

19 g. Make restitution in accordance with any order of
20 restitution, and not seek the discharge of any restitution
21 obligation, in whole or in part, in any present or future bankruptcy
22 proceeding.

23 h. Pay the applicable special assessment at or before the
24 time of sentencing unless defendant lacks the ability to pay and
25 prior to sentencing submits a completed financial statement on a form
26 to be provided by the USAO.

27 THE USAO'S OBLIGATIONS

28 3. The USAO agrees to:

1 a. Not contest facts agreed to in this agreement.

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

4 c. Except for criminal tax violations (including
5 conspiracy to commit such violations chargeable under 18 U.S.C.
6 § 371), not further criminally prosecute defendant for violations
7 arising out of defendant's conduct described in the agreed-to factual
8 basis set forth in paragraph 12 below.

9 d. At the time of sentencing, move to dismiss the
10 underlying indictment as against defendant. Defendant agrees,
11 however, that at the time of sentencing the Court may consider the
12 conduct underlying any dismissed charges in determining the
13 applicable Sentencing Guidelines range, the propriety and extent of
14 any departure from that range, and the sentence to be imposed.

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

21 f. Recommend that defendant be sentenced to a term of
22 imprisonment no higher than the low end of the applicable Sentencing
23 Guidelines range, provided that the offense level used by the Court
24 to determine that range is 25 or higher and provided that the Court
25 does not depart downward in offense level or criminal history
26 category. For purposes of this agreement, the low end of the
27 Sentencing Guidelines range is that defined by the Sentencing Table
28 in U.S.S.G. Chapter 5, Part A.

1 g. Recommend to the Court that the Court, in imposing
2 defendant's sentence, recommend to the Bureau of Prisons that, when
3 it calculates how defendant's sentence is served, defendant be given
4 credit for the time spent in official detention in Canada awaiting
5 extradition to the United States, pursuant to Title 18, United States
6 Code, Section 3585(b)(1).

7 NATURE OF THE OFFENSE

8 4. Defendant understands that for defendant to be guilty of
9 the crime charged in count one, that is, conspiracy, in violation of
10 Title 18, United States Code, Section 371, the following must be
11 true:

12 a. There was an agreement between two or more persons to
13 commit one or more federal offenses (in this case, two federal
14 offenses: first, to violate the Computer Fraud and Abuse Act, Title
15 18, United States Code, Section 1030(a)(2)(C) and (c)(2)(B)(i); and
16 second, to violate the Arms Export Control Act ("AECA"), Title 22,
17 United States Code, Section 2778(c), and the International Traffic in
18 Arms Regulations ("ITAR"), Title 22, Code of Federal Regulations,
19 Parts 120-130);

20 b. Defendant became a member of the conspiracy knowing of
21 at least one of its objects and intending to help accomplish it; and

22 c. One of the members of the conspiracy performed at
23 least one overt act for the purpose of carrying out the conspiracy.

24 5. The first crime that was an object of the conspiracy (a
25 violation of the Computer Fraud and Abuse Act, Title 18, United
26 States Code, Section 1030(a)(2)(C) and (c)(2)(B)(i)), has the
27 following elements:

1 a. The defendant or a co-conspirator intentionally
2 accessed without authorization a computer; and

3 b. By accessing without authorization a computer, the
4 defendant or a co-conspirator obtained information from a computer
5 that was used in or affected commerce or communication between one
6 state and other states, or between a state of the United States and a
7 foreign country.

8 6. The second crime that was an object of the conspiracy (a
9 violation of the AECA, Title 22, United States Code, Section 2778(c),
10 and the ITAR, Title 22, Code of Federal Regulations, Parts 120-130),
11 has the following elements:

12 a. Defendant or a co-conspirator exported information out
13 of the United States by any means;

14 b. The information was technical data, i.e., a defense
15 article or related to a defense article listed on the United States
16 Munitions List ("USML") set forth in the ITAR;

17 c. Neither defendant nor any co-conspirator obtained a
18 license from the Department of State, Directorate of Defense Trade
19 Controls; and

20 d. Defendant knew that exporting or disclosing the
21 technical data without a license was illegal.

22 7. Defendant understands that for defendant to be subject to
23 the statutory maximum sentence set forth below, the government must
24 prove beyond a reasonable doubt that, in conspiring to violate the
25 Computer Fraud and Abuse Act, Title 18, United States Code, Section
26 1030(a)(2)(C), the offense was committed for purposes of commercial
27 advantage or private financial gain. Defendant admits that the
28 conspiracy to violate the Computer Fraud and Abuse Act that he

1 entered was for purposes of commercial advantage and private
2 financial gain.

3 PENALTIES

4 8. Defendant understands that the statutory maximum sentence
5 that the Court can impose for a violation of Title 18, United States
6 Code, Section 371, is: 5 years' imprisonment; a one-year period of
7 supervised release; a fine of \$250,000 or twice the gross gain or
8 gross loss resulting from the offense, whichever is greatest; and a
9 mandatory special assessment of \$100.

10 9. Defendant understands that supervised release is a period
11 of time following imprisonment during which defendant will be subject
12 to various restrictions and requirements. Defendant understands that
13 if defendant violates one or more of the conditions of any supervised
14 release imposed, defendant may be returned to prison for all or part
15 of the term of supervised release authorized by statute for the
16 offense that resulted in the term of supervised release, which could
17 result in defendant serving a total term of imprisonment greater than
18 the statutory maximum stated above.

19 10. Defendant understands that, by pleading guilty, defendant
20 may be giving up valuable government benefits and valuable civic
21 rights, such as the right to vote, the right to possess a firearm,
22 the right to hold office, and the right to serve on a jury.
23 Defendant understands that once the court accepts defendant's guilty
24 plea, it will be a federal felony for defendant to possess a firearm
25 or ammunition. Defendant understands that the conviction in this
26 case may also subject defendant to various other collateral
27 consequences, including but not limited to revocation of probation,
28 parole, or supervised release in another case and suspension or

1 revocation of a professional license. Defendant understands that
2 unanticipated collateral consequences will not serve as grounds to
3 withdraw defendant's guilty plea.

4 11. Defendant understands that, if defendant is not a United
5 States citizen, the felony conviction in this case may subject
6 defendant to: removal, also known as deportation, which may, under
7 some circumstances, be mandatory; denial of citizenship; and denial
8 of admission to the United States in the future. The court cannot,
9 and defendant's attorney also may not be able to, advise defendant
10 fully regarding the immigration consequences of the felony conviction
11 in this case. Defendant understands that unexpected immigration
12 consequences will not serve as grounds to withdraw defendant's guilty
13 plea.

14 FACTUAL BASIS

15 12. Defendant admits that defendant is, in fact, guilty of the
16 offense to which defendant is agreeing to plead guilty. Defendant
17 and the USAO agree to the statement of facts provided below and agree
18 that this statement of facts is sufficient to support a plea of
19 guilty to the charge described in this agreement and to establish the
20 Sentencing Guidelines factors to which the parties have agreed set
21 forth in paragraph 14 below (noting that the parties do not agree as
22 to the application of certain Sentencing Guidelines factors, as
23 indicated in paragraphs 15 and 16) but is not meant to be a complete
24 recitation of all facts relevant to the underlying criminal conduct
25 or all facts known to either party that relate to that conduct.

26 a. Defendant is a citizen of the People's Republic of
27 China ("China") and has maintained immigration status as a resident
28 of Canada. Defendant owns and operates a business that deals in

1 aviation and aerospace technology, a field in which defendant is
2 trained and knowledgeable.

3 b. Unindicted Co-Conspirator 1 and Unindicted Co-
4 Conspirator 2 were each citizens of China and located in China, which
5 are facts defendant knew.

6 c. Beginning in or about October 2008, and continuing to
7 May 2014, defendant, Unindicted Co-Conspirator 1, and Unindicted Co-
8 Conspirator 2 agreed to gain unauthorized access to the computers and
9 computer networks of companies in the United States and elsewhere,
10 and to obtain information from those computers, including sensitive
11 and valuable military data that required a license for export from
12 the United States, and to export that information out of the United
13 States. Defendant joined the conspiracy knowing that these were its
14 objects. The companies that owned, maintained, and used those
15 computers were located in the United States, and those companies
16 produced goods and technologies that were sold and shipped to
17 customers, and were intended to be sold and shipped, in interstate
18 and foreign commerce. One such company was The Boeing Company
19 ("Boeing"). Specifically, Boeing maintained multiple computer
20 servers containing files relating to the C-17 military transport
21 aircraft (the "C-17"), including servers in Orange County,
22 California, containing detailed files necessary to make the component
23 parts of the C-17. The computers that were accessed without
24 authorization in the course of the conspiracy were thus protected
25 computers that were used in and affected interstate and foreign
26 commerce and communication. Over the course of the conspiracy,
27 defendant was in the United States, China, Canada, and other
28 countries.

1 d. Defendant knew that neither he nor Unindicted Co-
2 Conspirator 1 or Unindicted Co-Conspirator 2 were authorized to
3 access the computers or the data on the computers to which they
4 gained access in the course of the conspiracy.

5 e. After Unindicted Co-Conspirator 1 gained access to
6 information residing on computers of U.S. companies, he e-mailed
7 defendant directory file listings and folders showing the data
8 Unindicted Co-Conspirator 1 had been able to access. Defendant then
9 directed Unindicted Co-Conspirator 1 as to which files and folders
10 Unindicted Co-Conspirator 1 should steal. Defendant and Co-
11 Conspirator 1 did this specifically with respect to data related to
12 certain aircraft programs or technology. Unindicted Co-Conspirator 1
13 then used the access he had gained to those victims' computers and
14 stole the data that defendant had identified. The conspiracy
15 involved the use of sophisticated means and defendant caused the
16 conduct constituting the sophisticated means, including Co-
17 Conspirator 1's use of techniques to avoid detection when gaining and
18 maintaining access to and stealing data from the victims' computers.

19 f. Defendant, who operated a business that supplied
20 aviation and aerospace equipment, translated the contents of certain
21 data that defendant, Co-Conspirator 1, and Co-Conspirator 2 had
22 stolen that was in English into Chinese.

23 g. Defendant, Unindicted Co-Conspirator 1, and Unindicted
24 Co-Conspirator 2 each wrote, revised, and e-mailed certain reports
25 about the information and technology they had acquired by the
26 hacking. Those reports explained the value of the information and in
27 some cases noted that the information was controlled for export from
28 the United States.

1 h. Defendant engaged in this conduct for the purpose of
2 commercial gain, and specifically sought to profit from selling the
3 data he and Unindicted Co-Conspirator 1 had acquired.

4 i. Defendant and his co-conspirators knew and intended
5 that the data they accessed and stole included data that was
6 controlled for export from the United States. The data defendant
7 sought included technical data that was controlled for export because
8 it was included on the USML and was subject to the ITAR, Title 22,
9 Code of Federal Regulations, Parts 120-130.

10 j. Defendant knew that it was illegal to send in any way
11 military technical data that was controlled for export from the
12 United States, without a license or authorization from an agency of
13 the United States government. Defendant knew it was illegal for
14 defendant himself, Unindicted Co-Conspirator 1, and Unindicted Co-
15 Conspirator 2 to gain access to and review the contents of files and
16 documents on computer systems in the United States that contained
17 export-controlled military data, and also that it was illegal to
18 transmit those files out of the United States to any country without
19 a license or authorization to do so. Nonetheless that is what
20 defendant and his co-conspirators intended to do in furtherance of
21 the conspiracy. Neither defendant nor anyone else ever obtained a
22 license for the export or disclosure of any military technical data
23 that was controlled for export form the United States.

24 k. In furtherance of the conspiracy, defendant and other
25 members of the conspiracy committed at least one overt act, including
26 specifically the following:

27 (1) On December 14, 2009, defendant sent an e-mail to
28 Unindicted Co-conspirator 1 with a subject line of "Target."

1 Attached to the e-mail was a file containing the names and positions
2 of U.S. executives as well as a website and telephone number.

3 (2) On December 17, 2009, defendant sent an e-mail to
4 Unindicted Co-conspirator 1 and copied Unindicted Co-conspirator 2
5 with a subject line of "RE: Target." In that e-mail defendant
6 identified e-mail addresses, a website, and four individuals
7 associated with a European company.

8 (3) On January 21, 2010, Unindicted Co-conspirator 1
9 sent defendant a file titled "C-17_2.rar" and asked defendant to
10 write Unindicted Co-conspirator 1 a document about which files were
11 important, which ones were not important, and what they were.

12 (4) On January 23, 2010, defendant sent an e-mail to
13 Unindicted Co-conspirator 1 with a subject line of "RE: C-17 _2,"
14 attached a document titled "Appendix 3.rar," and wrote that, judging
15 from its name, the document looked fine.

16 (5) On January 23, 2010, Unindicted Co-conspirator 1
17 sent an e-mail to defendant with a subject line of "Re: C-17 _2," and
18 wrote that 3.txt was the list of documents.

19 (6) On January 25, 2010, defendant sent an e-mail to
20 Unindicted Co-conspirator 1 with a subject line of "Re: C-17 _2" and
21 attached a document titled "Appendix-3.docx," which was a list of
22 files and folders related to the C-17, with some files and folders
23 highlighted in yellow. In the e-mail defendant wrote that the useful
24 ones were marked in yellow.

25 (7) On February 28, 2010, defendant sent Unindicted
26 Co-conspirator 1 an e-mail in which defendant wrote that the value
27 was decent for a document related to a specific military aircraft.

28

1 (8) On March 19, 2010, Unindicted Co-conspirator 1
2 sent defendant an e-mail with a subject line of "View picture."
3 Unindicted Co-conspirator 1 attached to that e-mail an image of a
4 list of seven filenames and a description of their contents, six of
5 which files referred to "c-17" or "c17" in the name of the file.

6 (9) On April 4, 2010, defendant sent Unindicted Co-
7 conspirator 1 an e-mail asking Unindicted Co-conspirator 1 to take a
8 look at a specific file.

9 (10) On April 4, 2010, Unindicted Co-conspirator 1
10 sent defendant an e-mail attached to which was an image showing a
11 computer monitor displaying a presentation related to training on a
12 U.S. military aircraft, which was marked proprietary and with an
13 export control warning.

14 (11) On November 10, 2011, defendant edited a report
15 that discussed how an identified non-U.S. entity had acquired
16 research and development information that related to a specific
17 military project that was subject to export restrictions, explained
18 why that information was valuable, and sought support to complete its
19 work in acquiring more information.

20 (12) On November 10, 2011, defendant sent an e-mail to
21 Unindicted Co-conspirator 1 and Unindicted Co-conspirator 2.
22 Attached to that e-mail was the report described in paragraph (11).

23 (13) On March 23, 2012, defendant modified a document
24 related to a flight test plan for a U.S. military aircraft with
25 different portions written in English and in Chinese that bore
26 notations that it was proprietary information and subject to export
27 restrictions.

1 (14) On May 3, 2012, defendant sent an e-mail to
2 Unindicted Co-conspirator 1, attached to which was the document
3 described in paragraph (13).

4 SENTENCING FACTORS

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

17 14. Defendant and the USAO agree to the following applicable
18 Sentencing Guidelines factors:

19 a. Because defendant is charged with violating Title 18,
20 United States Code, Section 371, U.S.S.G. § 2X1.1 applies. Pursuant
21 to U.S.S.G. § 2X1.1(a), the applicable offense level is the base
22 offense level for the substantive offense that is the object of the
23 conspiracy plus applicable adjustments. The parties agree that the
24 three level decrease pursuant to U.S.S.G. § 2X1.1(b)(2) does not
25 apply. Because defendant is charged with a conspiracy with two
26 objects, each a different substantive offense, pursuant to U.S.S.G.
27 § 3D1.2, comment 8, the Guidelines factors to which the parties have
28 agreed for each substantive offense are set forth below.

1 b. To the first object of the conspiracy, namely to
2 violate the Computer Fraud and Abuse Act, Title 18, United States
3 Code, Section 1030(a)(2)(C) and (c)(2)(B)(i), the following
4 Guidelines apply:

5	Base Offense Level:	6	[U.S.S.G. § 2B1.1(a)(2)]
6	Use of Sophisticated Means		[U.S.S.G.
7		+2	§ 2B1.1(b)(10)(C)]

8 c. To the second object of the conspiracy, namely to
9 violate the AECA, Title 22, United States Code, Section 2778(c), and
10 the ITAR, the following Guidelines apply:

11	Base Offense Level:	26	[U.S.S.G. § 2M5.2(a)(1)]
----	---------------------	----	--------------------------

12 15. Defendant and the USAO, however, do not agree as to whether
13 certain Guidelines enhancements and adjustments apply to the offense
14 conduct. For purposes of the object of the conspiracy that was to
15 violate the Computer Fraud and Abuse Act, Title 18, United States
16 Code, Section 1030(a)(2)(C) and (c)(2)(B)(i), defendant and the USAO
17 agree that either party may argue that any of the following
18 enhancements do or do not apply, and that while the government
19 intends to recommend that the following enhancements apply and will
20 submit evidence to support the facts necessary for their application,
21 defendant contests their application and contends that they do not
22 apply:

23 a. The application of up to sixteen-levels of an
24 enhancement based on the loss amount involved in the offense measured
25 under the Guidelines, pursuant to U.S.S.G. § 2B1.1(b)(1)(I), which
26 enhancement applies if the loss amount is more than \$1,500,000. The
27 government agrees not to argue that the loss amount exceeds
28 \$2,000,000; and

1 b. The application of a four-level enhancement based on
2 the misappropriation of a trade secret that defendant knew or
3 intended would benefit a foreign government, foreign instrumentality,
4 or foreign agent, pursuant to U.S.S.G. § 2B1.1(b) (13) (B), or in the
5 alternative, the application of a two-level enhancement based on the
6 misappropriation of a trade secret that defendant knew or intended
7 would be transported or transmitted out of the United States,
8 pursuant to U.S.S.G. § 2B1.1(b) (13) (A).

9 16. Defendant and the USAO also do not agree as to whether
10 defendant is entitled to any decrease in his offense level based on
11 an adjustment for mitigating role in the offense pursuant to U.S.S.G.
12 § 3B1.2.

13 17. The parties agree that the separate objects of the
14 conspiracy group with each other for purposes of calculating the
15 advisory Guidelines range pursuant to U.S.S.G. § 3D1.2(a),
16 § 3D1.2(b), and § 3D1.2 comment 8. Therefore the parties agree that
17 the offense level applicable to the single group will be the offense
18 level applicable to whichever of the two objects of the conspiracy
19 that is higher, pursuant to U.S.S.G. § 3D1.3(a). The maximum offense
20 level that would result from this agreement, should the government
21 recommend the reduction of three levels provided in paragraph 3.e, is
22 25.

23 18. Aside from the specific Guidelines provisions discussed
24 above and herein, defendant and the USAO agree not to seek, argue, or
25 suggest in any way, either orally or in writing, that any other
26 specific offense characteristics, adjustments, or departures relating
27 to the offense level be imposed. Defendant agrees, however, that if,
28 after signing this agreement but prior to sentencing, defendant were

1 to commit an act, or the USAO were to discover a previously
2 undiscovered act committed by defendant prior to signing this
3 agreement, which act, in the judgment of the USAO, constituted
4 obstruction of justice within the meaning of U.S.S.G. § 3C1.1, the
5 USAO would be free to seek the enhancement set forth in that section.

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

8 20. Defendant understands that there is no agreement as to the
9 application or amount of any restitution to any victim.

10 21. Except as provided in paragraph 3.f, defendant and the USAO
11 reserve the right to argue for a sentence outside the sentencing
12 range established by the Sentencing Guidelines based on the factors
13 set forth in 18 U.S.C. § 3553(a)(1), (a)(2), (a)(3), (a)(6), and
14 (a)(7).

15 WAIVER OF CONSTITUTIONAL RIGHTS

16 22. Defendant understands that by pleading guilty, defendant
17 gives up the following rights:

18 a. The right to persist in a plea of not guilty.

19 b. The right to a speedy and public trial by jury.

20 c. The right to be represented by counsel -- and if
21 necessary have the court appoint counsel -- at trial. Defendant
22 understands, however, that, defendant retains the right to be
23 represented by counsel -- and if necessary have the court appoint
24 counsel -- at every other stage of the proceeding.

25 d. The right to be presumed innocent and to have the
26 burden of proof placed on the government to prove defendant guilty
27 beyond a reasonable doubt.

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

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

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

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

12 WAIVER OF RETURN OF DIGITAL DATA AND DOCUMENTS

13 23. Understanding that pursuant to the request for assistance
14 ("the Request") submitted on June 30, 2014, pursuant to the Mutual
15 Legal Assistance Treaty between the U.S. and Canada ("the Treaty"),
16 legal authorities in Canada have seized on behalf of the USAO and the
17 Federal Bureau of Investigation ("FBI") digital devices and/or
18 digital media and/or documents from defendant and his residence, and
19 that such digital devices, digital media, and/or documents may
20 contain proprietary information or information or data subject to the
21 ITAR or to other U.S. export-control regulations that prohibit their
22 export outside of the United States ("export-controlled
23 information"), defendant will consent before Canadian Courts to the
24 issuance of an unconditional Sending Order for the transmittal to the
25 United States of all of the evidence seized pursuant to the Request.
26 The USAO and the FBI agree to return to defendant the original
27 documents as well as the original devices or original media
28 themselves and any personal or business files thereon not

1 constituting export-controlled information or proprietary information
2 after conducting a review of copies of the entire contents of those
3 devices, media, and documents in a manner that allows for the USAO
4 and FBI to determine whether they contain proprietary or export-
5 controlled information, understanding that the USAO and the FBI will
6 retain and use copies of the contents of the devices, media, and the
7 documents in accordance with the Treaty.

8 WAIVER OF APPEAL OF CONVICTION

9 24. Defendant understands that, with the exception of an appeal
10 based on a claim that defendant's guilty plea was involuntary, by
11 pleading guilty defendant is waiving and giving up any right to
12 appeal defendant's conviction on the offense to which defendant is
13 pleading guilty.

14 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

15 AND WAIVER OF COLLATERAL ATTACK

16 25. Defendant agrees that, provided the Court imposes a total
17 term of imprisonment on all counts of conviction of no more than 57
18 months' imprisonment, defendant gives up the right to appeal all of
19 the following: (a) the procedures and calculations used to determine
20 and impose any portion of the sentence; (b) the term of imprisonment
21 imposed by the Court; (c) the fine imposed by the court, provided it
22 is within the statutory maximum; (d) the term of probation or
23 supervised release imposed by the Court, provided it is within the
24 statutory maximum; and (e) any of the following conditions of
25 probation or supervised release imposed by the Court: the conditions
26 set forth in General Orders 318, 01-05, and/or 05-02 of this Court;
27 the drug testing conditions mandated by 18 U.S.C. §§ 3563(a)(5) and
28

1 3583(d); and the alcohol and drug use conditions authorized by 18
2 U.S.C. § 3563(b)(7).

3 26. Defendant also gives up any right to bring a post-
4 conviction collateral attack on the conviction or sentence, including
5 any order of restitution, except a post-conviction collateral attack
6 based on a claim of ineffective assistance of counsel, a claim of
7 newly discovered evidence, or an explicitly retroactive change in the
8 applicable Sentencing Guidelines, sentencing statutes, or statutes of
9 conviction.

10 27. The USAO agrees that, provided (a) all portions of the
11 sentence are at or below the statutory maximum specified above and
12 (b) the Court imposes a term of imprisonment of no less than 37
13 months, the USAO gives up its right to appeal any portion of the
14 sentence.

15 RESULT OF WITHDRAWAL OF GUILTY PLEA

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

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

3 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

4 29. Defendant agrees that if the count of conviction is
5 vacated, reversed, or set aside, both the USAO and defendant will be
6 released from all their obligations under this agreement.

7 EFFECTIVE DATE OF AGREEMENT

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

11 BREACH OF AGREEMENT

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

26 32. Following the Court's finding of a knowing breach of this
27 agreement by defendant, should the USAO choose to pursue any charge
28

1 that was either dismissed or not filed as a result of this agreement,
2 then:

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

6 b. Defendant waives and gives up all defenses based on
7 the statute of limitations, any claim of pre-indictment delay, or any
8 speedy trial claim with respect to any such action, except to the
9 extent that such defenses existed as of the date of defendant's
10 signing this agreement.

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

22 COURT AND PROBATION OFFICE NOT PARTIES

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

27 34. Defendant understands that both defendant and the USAO are
28 free to: (a) supplement the facts by supplying relevant information

1 to the United States Probation Office and the Court, (b) correct any
2 and all factual misstatements relating to the Court's Sentencing
3 Guidelines calculations and determination of sentence, and (c) argue
4 on appeal and collateral review that the Court's Sentencing
5 Guidelines calculations and the sentence it chooses to impose are not
6 error, although each party agrees to maintain its view that the
7 calculations in paragraph 14 are consistent with the facts of this
8 case. While this paragraph permits both the USAO and defendant to
9 submit full and complete factual information to the United States
10 Probation Office and the Court, even if that factual information may
11 be viewed as inconsistent with the facts agreed to in this agreement,
12 this paragraph does not affect defendant's and the USAO's obligations
13 not to contest the facts agreed to in this agreement.

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

24 NO ADDITIONAL AGREEMENTS

25 36. Defendant understands that, except as set forth herein,
26 there are no promises, understandings, or agreements between the USAO
27 and defendant or defendant's attorney, and that no additional
28

1 promise, understanding, or agreement may be entered into unless in a
2 writing signed by all parties or on the record in court.


3 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

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

7 AGREED AND ACCEPTED

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

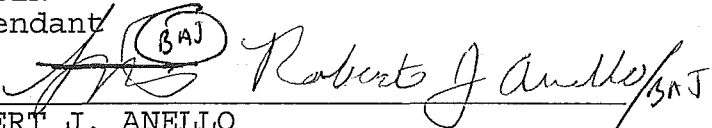
10 EILEEN M. DECKER
United States Attorney

11 
12 _____
13 ANTHONY J. LEWIS
Assistant United States Attorney

_____ March 10, 2016
Date

14 
15 _____
16 SU BIN
Defendant

_____ 2/17/16
Date

17 
18 _____
19 ROBERT J. ANELLO
Attorney for Defendant Su Bin

_____ 2/17/16
Date

20 CERTIFICATION OF DEFENDANT

21 I have read this agreement in its entirety. This agreement has
22 been read to me in Chinese, the language I understand best. I have
23 had enough time to review and consider this agreement, and I have
24 carefully and thoroughly discussed every part of it with my attorney.
25 I understand the terms of this agreement, and I voluntarily agree to
26 those terms. I have discussed the evidence with my attorney, and my
27 attorney has advised me of my rights, of possible pretrial motions
28 that might be filed, of possible defenses that might be asserted

1 either prior to or at trial, of the sentencing factors set forth in
2 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions,
3 and of the consequences of entering into this agreement. No
4 promises, inducements, or representations of any kind have been made
5 to me other than those contained in this agreement. No one has
6 threatened or forced me in any way to enter into this agreement. I
7 am satisfied with the representation of my attorney in this matter,
8 and I am pleading guilty because I am guilty of the charges and wish
9 to take advantage of the promises set forth in this agreement, and
10 not for any other reason.

11 

12 SU BIN
13 Defendant

14 Date

2/17/16

15 CERTIFICATION OF INTERPRETER

16 I _____ am fluent in the written and
17 spoken English and Chinese languages. I accurately translated this
18 entire agreement from English into Chinese to defendant Su Bin on
19 this date. *Not needed. (BAJ)*

20 

21 INTERPRETER SIGNATURE

22 Date

2/17/16

23 CERTIFICATION OF DEFENDANT'S ATTORNEY

24 I am Su Bin's attorney. I have carefully and thoroughly
25 discussed every part of this agreement with my client. Further, I
26 have fully advised my client of his rights, of possible pretrial
27 motions that might be filed, of possible defenses that might be
28 asserted either prior to or at trial, of the sentencing factors set

1 forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines
2 provisions, and of the consequences of entering into this agreement.
3 To my knowledge: no promises, inducements, or representations of any
4 kind have been made to my client other than those contained in this
5 agreement; no one has threatened or forced my client in any way to
6 enter into this agreement; my client's decision to enter into this
7 agreement is an informed and voluntary one; and the factual basis set
8 forth in this agreement is sufficient to support my client's entry of
9 a guilty plea pursuant to this agreement.

Robert J. Anello/BAS

2/17/16

11 ROBERT J. ANELLO
12 Attorney for Defendant Su Bin

Date

Exhibit A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SA CR No. 14-131(C)

F I R S T
S U P E R S E D I N G
I N F O R M A T I O N

SU BIN,
aka "Stephen Su,"
aka "Stephen Subin,"
aka "Steven Subin,"

Defendant.

[18 U.S.C. § 371: Conspiracy; 18 U.S.C. §§ 1030(a)(2)(C), (c)(2)(B)(i): Unauthorized Computer Access; 22 U.S.C. §§ 2778(b)(2), (c), 22 C.F.R. §§ 121.1, 123.1, 127.1(a)(1), 127.1(a)(3), 127.1(a)(4), 127.1(d), 127.1(e): Arms Export Control Act]

The United States Attorney charges:

COUNT ONE

[18 U.S.C. § 371]

INTRODUCTORY ALLEGATIONS

At all times relevant to this Information:

1. Defendant SU BIN, also known as ("aka") "Stephen Su," aka "Stephen Subin," aka "Steven Subin" ("defendant SU"), was a citizen of the People's Republic of China (hereinafter "China").
2. Unindicted Co-conspirator 1 was a citizen of China and resided in China.

1 3. Unindicted Co-conspirator 2 was a citizen of China and
2 resided in China.

3 4. Defendant SU, Unindicted Co-conspirator 1, and Unindicted
4 Co-conspirator 2 e-mailed each other both in Chinese and English.

5 5. The Boeing Company (hereinafter "Boeing"), headquartered in
6 Chicago, Illinois, was a company with offices throughout the United
7 States that developed and sold military and commercial aircraft,
8 among other goods; technologies; and related support services.

9 Boeing had facilities in many locations, including Seal Beach and
10 Long Beach, California. The goods and technologies Boeing sold to
11 its customers were sold and shipped, and were intended to be sold and
12 shipped, in interstate and foreign commerce.

13 6. One of the aircraft models that Boeing manufactured was the
14 C-17 military transport aircraft ("the C-17"), including variants of
15 the C-17, which was manufactured in Los Angeles County, California,
16 located in the Central District of California. The C-17 was
17 developed over multiple years and produced by Boeing and its
18 predecessor and subcontractors pursuant to contracts with the United
19 States Air Force at a cost of billions of dollars. Developing and
20 producing the C-17 required the use of export-controlled technical
21 data. Boeing maintained multiple computer servers containing files
22 relating to the C-17, including servers in Orange County, California,
23 containing detailed files necessary to make the component parts of
24 the C-17.

25 7. The F-35 "Lightning" was a fifth-generation fighter jet
26 aircraft capable of supersonic speed and equipped with "stealth"
27 capabilities that allowed it to evade radar ("the F-35").
28

1 8. The F-22 "Raptor" was a fifth-generation fighter jet
2 aircraft capable of supersonic speed and equipped with "stealth"
3 capabilities that allowed it to evade radar ("the F-22").

4 9. The Arms Export Control Act, Title 22, United States Code,
5 Section 2778 ("AECA"), authorized the President of the United States
6 to control the export of "defense articles" and "technical data"
7 related to such defense articles by designating those items and that
8 data as defense articles and by promulgating regulations for the
9 import and export of such articles and data.

10 10. Defense articles and technical data subject to such
11 licensing requirements were designated on the United States Munitions
12 List ("USML"). Those designations were made by the United States
13 Department of State ("Department of State") with the concurrence of
14 the United States Department of Defense ("Department of Defense").
15 (22 U.S.C. § 2778(a)(1); 22 C.F.R. § 120.2.)

16 11. Category VIII of the USML, among others, included aircraft
17 and aircraft-related equipment. (22 C.F.R. § 121.1.)

18 12. The AECA and its attendant regulations, the International
19 Traffic in Arms Regulations, Title 22, Code of Federal Regulations,
20 Parts 120-130 ("ITAR"), which contains the USML, required a person to
21 apply for and obtain an export license from the Directorate of
22 Defense Trade Controls ("DDTC") of the Department of State before
23 exporting from the United States defense articles or related
24 technical data by any means, including by disclosing technical data
25 on the USML to a foreign person. (22 U.S.C. § 2778(b)(2); 22 C.F.R.
26 §§ 120.1, 120.10, 120.17.)

1 13. At no time did defendant SU apply for, receive, or possess
2 a license to export defense articles or related technical data from
3 the United States.

4 A. OBJECT OF THE CONSPIRACY

5 14. Beginning in or about October 2008, and continuing up to
6 and including at least in or about May 2014, in Orange County, within
7 the Central District of California, and elsewhere, including outside
8 the United States, defendant SU BIN, also known as ("aka") "Stephen
9 Su," aka "Stephen Subin," aka "Steven Subin" ("defendant SU"),
10 Unindicted Co-conspirator 1, Unindicted Co-conspirator 2, and others
11 known and unknown to the Grand Jury, knowingly combined, conspired,
12 and agreed with each other knowingly and intentionally to commit an
13 offense against the United States, namely:

14 a. To intentionally access a protected computer without
15 authorization, and exceed authorized access, and thereby obtain
16 information from a protected computer, as that term is defined at
17 Title 18, United States Code, Section 1030(e)(2), where the offense
18 was committed for purposes of commercial advantage and private
19 financial gain; and

20 b. To willfully export and cause to be exported from the
21 United States items designated as defense articles on the USML,
22 namely technical data, including by means of disclosing such
23 technical data to foreign nationals, without having first obtained
24 from the DDTC the required export license or authorization for such
25 export, in violation of Title 22, United States Code, Sections
26 2778(b) and (c), and Title 22, Code of Federal Regulations, Sections
27 121.1, 123.1, 127.1(a)(1), 127.1(a)(3), 127.1(a)(4), 127.1(d), and
28 127.1(e).

1 A. MEANS BY WHICH THE OBJECT OF THE CONSPIRACY WAS TO BE
2 ACCOMPLISHED

3 15. The objects of the conspiracy were to be accomplished in
4 substance as follows:

5 16. Defendant SU would e-mail Unindicted Co-Conspirators 1 and
6 2 the persons, companies, and technologies to target in order to
7 obtain export-controlled technical data and other information through
8 unlawful computer intrusions.

9 17. Unindicted Co-Conspirator 1 would e-mail defendant SU
10 information and files showing defendant SU the export-controlled
11 technical data and other information and files to which Unindicted
12 Co-conspirator 1 had gained access through unlawful computer
13 intrusions. Defendant SU would then advise Unindicted Co-conspirator
14 1 as to which information and files Unindicted Co-conspirator 1
15 should steal. After gaining unauthorized access into various
16 protected computers, Unindicted Co-conspirator 1 would then steal,
17 copy, download, transmit, possess, and send the information and files
18 that defendant SU had identified, without having obtained permission
19 or authorization to export technical data out of the United States or
20 to disclose it to foreign persons.

21 18. Defendant SU, Unindicted Co-conspirator 1, and Unindicted
22 Co-conspirator 2 would then write, revise, and circulate reports that
23 described the export-controlled technical data and other information
24 they and others had obtained by engaging in such computer hacking,
25 the value of that information, the significance of the information in
26 developing similar technologies, their progress, and their need to
27 continue their computer intrusions. The reports would also explain
28 that the information was protected by U.S. export restrictions.

1 19. Defendant SU and Unindicted Co-conspirator 1 would
2 communicate about selling some of the information that they had
3 obtained as a result of their unlawful computer intrusions.

4 B. OVERT ACTS

5 20. On or about the relevant dates listed herein, in
6 furtherance of the conspiracy and to accomplish the object of the
7 conspiracy, defendant SU, Unindicted Co-conspirator 1, Unindicted Co-
8 conspirator 2, and others known and unknown to the Grand Jury,
9 committed various overt acts within the Central District of
10 California and elsewhere. Those overt acts included committing
11 computer intrusions, sending e-mails, drafting and revising reports
12 and other documents, and other overt acts, and include, but are not
13 limited to, the following:

14 Overt Act #1: On December 14, 2009, defendant SU sent an e-mail
15 to Unindicted Co-conspirator 1 with a subject line of "Target."

16 Overt Act #2: On December 17, 2009, defendant SU sent an e-mail
17 to Unindicted Co-conspirator 1 and copied Unindicted Co-conspirator 2
18 with a subject line of "RE: Target."

19 Overt Act #3: On January 21, 2010, Unindicted Co-conspirator 1
20 sent defendant an e-mail attaching a file titled "C-17_2.rar."

21 Overt Act #4: On January 23, 2010, defendant sent an e-mail to
22 Unindicted Co-conspirator 1 with a subject line of "RE: C-17 _2."

23 Overt Act #5: On January 23, 2010, Unindicted Co-conspirator 1
24 sent an e-mail to defendant with a subject line of "Re: C-17 _2."

25 Overt Act #6: On January 25, 2010, defendant sent an e-mail to
26 Unindicted Co-conspirator 1 with a subject line of "Re: C-17 _2" and
27 attached a document titled "Appendix-3.docx."

1 Overt Act #7: On February 28, 2010, defendant sent Unindicted
2 Co-conspirator 1 an e-mail discussing a specific military aircraft.

3 Overt Act #8: On March 19, 2010, Unindicted Co-conspirator 1
4 sent defendant an e-mail with a subject line of "View picture."

5 Overt Act #9: On April 4, 2010, defendant sent Unindicted Co-
6 conspirator 1 an e-mail asking Unindicted Co-conspirator 1 to take a
7 look at a specific file.

8 Overt Act #10: On April 4, 2010, Unindicted Co-conspirator 1
9 sent defendant an e-mail attaching an image of a computer monitor.

10 Overt Act #11: On November 10, 2011, defendant edited a report
11 related to a specific military project.

12 Overt Act #12: On November 10, 2011, defendant sent an e-mail
13 to Unindicted Co-conspirator 1 and Unindicted Co-conspirator 2
14 attaching the report described in Overt Act #9.

15 Overt Act #13: On March 23, 2012, defendant modified a document
16 related to a flight test plan for a military aircraft.

17 //
18 //

1 Overt Act #14: On May 3, 2012, defendant sent an e-mail to
2 Unindicted Co-conspirator 1 attaching the document described in Overt
3 Act #11.

4
5 EILEEN M. DECKER
6 United States Attorney

7
8 PATRICIA A. DONAHUE
9 Assistant United States Attorney
Chief, National Security Division

10 CHRISTOPHER D. GRIGG
11 Assistant United States Attorney
Chief, Terrorism and Export
12 Crimes Section

13 ANTHONY J. LEWIS
14 Assistant United States Attorney
Deputy Chief, Terrorism and Export
15 Crimes Section

CERTIFICATE OF SERVICE

I, CAREY P. CRONIN, declare:

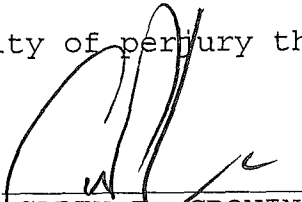
That I am a citizen of the United States and a resident of or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of 18; and that I am not a party to the above-titled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of:

PLEA AGREEMENT FOR DEFENDANT SU BIN

- | | |
|--|--|
| <input type="checkbox"/> Placed in a closed envelope for collection and inter-office delivery, addressed as follows: | <input checked="" type="checkbox"/> Placed in a sealed envelope for collection and mailing via United States mail, addressed as follows: SEE ATTACHMENT |
| <input type="checkbox"/> By hand delivery, addressed as follows: | <input type="checkbox"/> By facsimile, as follows: |
| <input type="checkbox"/> By email, as follows: | <input type="checkbox"/> By Federal Express, as follows: |

This Certificate is executed on March 22, 2016 at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.



CAREY P. CRONIN
Legal Assistant

ATTACHMENT U.S. v. SU BIN SA CR 14-131

Brian James Hennigan

Hueston Hennigan LLP
523 West Sixth Street Suite 400
Los Angeles, CA 90014
213-788-4340

Brian A Jacobs

Morvillo Abramowitz Grand Iason and Anello PC
565 Fifth Avenue
New York, NY 10017
212-880-9536

Devin M Cain

Morvillo Abramowitz Grand Iason and Anello PC
565 Fifth Avenue
New York, NY 10017
212-880-9425

Marshall A Camp

Hueston Hennigan LLP
523 West 6th Street Suite 400
Los Angeles, CA 90014
213-788-4351

Robert J Anello

Morvillo Abramowitz Grand Iason and Anello PC
565 Fifth Avenue
New York, NY 10017
212-880-9520