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EL/PL AGR
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January 29, 2010

Roy Kahn, Esq.
Suite 606
799 Bricknell Plaza
Miami, Florida 33131

Re: Plea Agreement with EDWIN PENA

Dear Mr. Kahn:

This letter sets forth the plea agreement between your client, Edwin Pena, and the United States Attorney for the District of New Jersey ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Edwin Pena to Counts One and Three of the Indictment, Criminal No. 09-103 (SDW), which charges, in Count One, conspiracy to commit wire fraud and unauthorized access to a protected computer, contrary to 18 U.S.C. §§ 1343 and 1030(a)(4), in violation of 18 U.S.C. § 371, and, in Count Three, wire fraud in violation of 18 U.S.C. §§ 1343 and 2. If Edwin Pena enters a guilty plea and is sentenced on these charges, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against Edwin Pena relating to his participation in the scheme, between November 2004 and May 2006, to secretly hack protected computers, including those of Net2Phone, Inc.; OpHedge Investment Services, LLC; Unified Worldwide Transport; Latinode Communications; Ntera; S&S Communications; Novatel; Calls for Less; VoEx; Network Management Inc.; Multiphone Latin America Inc.; RS and Associates International Inc.; Go2Tel; Next Communications; and other voice over internet protocol telephone service providers, in order to route voice over internet protocol telephone calls of his customers. The office will further not initiate criminal charges against Edwin Pena for his fleeing the jurisdiction while on supervised release in 2005. However, in the event that the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Edwin Pena may be commenced against him,

notwithstanding the expiration of the limitations period after Edwin Pena signs the agreement. Edwin Pena agrees to waive any statute of limitations with respect to any crime that would otherwise expire after Edwin Pena signs the agreement.

Sentencing

The violation of 18 U.S.C. § 371 to which Edwin Pena agrees to plead guilty carries a statutory maximum prison sentence of 5 years and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense.

The violation of 18 U.S.C. § 1343 to which Edwin Pena agrees to plead guilty carries a statutory maximum prison sentence of 20 years and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense.

Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon Edwin Pena is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. § 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence Edwin Pena ultimately will receive.

Further, in addition to imposing any other penalty on Edwin Pena, the sentencing judge: (1) will order Edwin Pena to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) must order Edwin Pena to pay restitution pursuant to 18 U.S.C. §§ 3663 et seq.; (3) may order Edwin Pena, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; (4) must order forfeiture, pursuant to 18 U.S.C. § 982; and (5) pursuant to 18 U.S.C. § 3583, may require Edwin Pena to serve a term of supervised release of not more than three years for Count One and

three years for Count ~~3~~, which will begin at the expiration of any term of imprisonment imposed. Should Edwin Pena be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, he may be sentenced to not more than two years' imprisonment on Count One and two years' imprisonment on Count Three in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

In addition, Edwin Pena agrees to make full restitution for all losses resulting from the offense of conviction or from the scheme, conspiracy, or pattern of criminal activity underlying that offense, to Net2Phone, Inc., OpHedge Investment Services, LLC, Unified Worldwide Transport, Latinode Communications, Ntera, S&S Communications, Novatel, Calls for Less, VoEx, Network Management Inc., Multiphone Latin America Inc, RS and Associates International Inc., Go2Tel, and Next Communications in the amount of \$1,041,000.

Rights of this Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Edwin Pena by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Edwin Pena's activities and relevant conduct with respect to this case.

Stipulations

This Office and Edwin Pena agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or

conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Edwin Pena from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Edwin Pena waive certain rights to file an appeal, collateral attack, writ or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

The defendant understands that he is bound by his guilty plea regardless of the immigration consequences of the plea and regardless of any advice the defendant has received from his counsel or others regarding those consequences. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on those consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on the immigration consequences of his guilty plea, conviction, or sentence.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Edwin Pena. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue

Service and Immigration and Customs Enforcement), or any third party from initiating or prosecuting any civil proceeding against Edwin Pena.

No Other Promises

This agreement constitutes the plea agreement between Edwin Pena and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

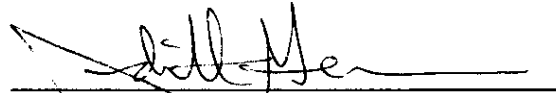
Very truly yours,

PAUL J. FISHMAN
United States Attorney



By: EREZ LIEBERMANN
Assistant U.S. Attorney

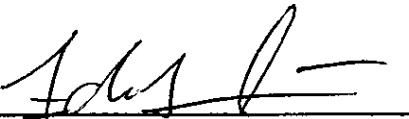
APPROVED:



Judith Germano, Chief
Commercial Crimes Unit

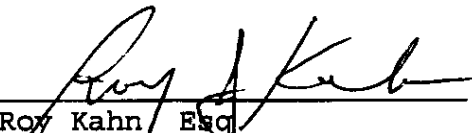
I have received this letter from my attorney, Roy Kahn, Esq., I have read it, and I understand it fully. I hereby accept the terms and conditions set forth in this letter and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

AGREED AND ACCEPTED:



Edwin Pena

Date: 2-3-10



Roy Kahn Esq

Date: 2-3-10

Plea Agreement With Edwin Pena

Schedule A

1. This Office and Edwin Pena recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and Edwin Pena nevertheless agree to the stipulations set forth herein.

2. The current version of the United States Sentencing Guidelines in effect at the time of sentencing applies in this case.

Count One

3. The applicable guideline for the offense charged in Count One is U.S.S.G. § 2B1.1. This guideline carries a Base Offense Level of 6.

4. The total loss to the victims was between \$1,000,000 and \$2,500,000. This results in an increase of 16 levels. See U.S.S.G. § 2B1.1(b)(1)(I).

5. The offense involved greater than 10 victims but less than 50 victims. This results in an increase of 2 levels. See U.S.S.G. § 2B1.1(b)(2)(A)(i).

6. Edwin Pena used sophisticated computer programming skills to facilitate the offense and much of the offense was committed outside the United States. This results in an increase of 2 levels. See U.S.S.G. § 2B1.1(b)(9)(B) and (C).

7. The offense involved the use of an authentication feature and unauthorized access device. This results in an increase of 2 levels. See U.S.S.G. § 2B1.1(b)(10)(A) and (B).

8. Edwin Pena willfully obstructed justice or impeded the administration of justice. This results in an increase of 2 levels. See U.S.S.G. § 3C1.1.

9. In accordance with the above, the parties agree that the total Guidelines offense level applicable to Count One of the Information is 30 (the "Count One Guidelines Offense Level").

Count Three

10. The applicable guideline for the offense charged in Count Three is U.S.S.G. § 2B1.1. This guideline carries a Base Offense Level of 7.

11. The total loss to the victims was between \$1,000,000 and \$2,500,000. This results in an increase of 16 levels. See U.S.S.G. § 2B1.1(b)(1)(I).

12. The offense involved greater than 10 victims but less than 50 victims. This results in an increase of 2 levels. See U.S.S.G. § 2B1.1(b)(2)(A)(i).

13. Edwin Pena used sophisticated computer programming skills to facilitate the offense and much of the offense was committed outside the United States. This results in an increase of 2 levels. See U.S.S.G. § 2B1.1(b)(9)(B) and (C).

14. The offense involved the use of an authentication feature and unauthorized access device. This results in an increase of 2 levels. See U.S.S.G. § 2B1.1(b)(10)(A) and (B).

15. Edwin Pena willfully obstructed justice or impeded the administration of justice. This results in an increase of 2 levels. See U.S.S.G. § 3C1.1.

16. In accordance with the above, the parties agree that the total Guidelines offense level applicable to Count Three of the Information is 31 (the "Count Three Guidelines Offense Level").

Grouping Analysis

17. The United States and Edwin Pena agree that pursuant to U.S.S.G. § 3D1.2(c) Counts One and Three of the Indictment should be grouped together for sentencing purposes.

18. The United States and Edwin Pena agree that the combined offense level for the offenses charged in Counts One and Three of the Indictment is determined by taking the offense level applicable to the count with the highest offense level (i.e., the Count Three Guidelines offense level of 31). See U.S.S.G. § 3D1.4(a).

19. As of the date of this letter, Edwin Pena has clearly demonstrated a recognition and affirmative acceptance of

personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if Edwin Pena's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

20. As of the date of this letter, Edwin Pena has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. If Edwin Pena enters a plea pursuant to this agreement and qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and if in addition Edwin Pena's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater, Edwin Pena will be entitled to a further 1-point reduction in his offense level pursuant to U.S.S.G. § 3E1.1(b).

21. In accordance with the above, the parties agree that the total Guidelines offense level applicable to Counts One and Three of the Indictment is 28 (the "Agreed Total Guidelines Offense Level").

22. The Government reserves the right to argue that Edwin Pena was an organizer, leader, manager, or supervisor of the relevant criminal activity. This would result in an increase of 2 levels. See U.S.S.G. § 3B1.1(c). Defendant reserves the right to oppose such an argument. The parties reserve the right to make departure motions and argue for a variance.

23. Edwin Pena knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from the total Guidelines offense level of 28, or 30 if the Court accepts the Government's argument on U.S.S.G. § 3B1.1(c). This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from the total Guidelines offense level of 28. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a

Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

24. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.