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11 UNITED STATES DISTRICT COURT  
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA, ) CR No. 09-1215-R  
 14 )  
 Plaintiff, ) PLEA AGREEMENT FOR DEFENDANT  
 15 ) MICHAEL DAVID BARRETT  
 v. )  
 16 )  
 MICHAEL DAVID BARRETT, )  
 17 aka "Mark Bennett," )  
 aka "handsfouryou," )  
 18 aka "GOBLAZERS1," )  
 )  
 19 Defendant. )

20  
 21 1. This constitutes the plea agreement between MICHAEL  
 22 DAVID BARRETT ("defendant") and the United States Attorney's  
 23 Office for the Central District of California ("USAO") in the  
 24 above-entitled case. This agreement is limited to the USAO and  
 25 cannot bind any other federal, state or local prosecuting,  
 26 administrative or regulatory authorities. This agreement does  
 27 not bind the USAO, or any other federal, state or local  
 28 prosecuting, administrative or regulatory authorities with

1 respect to prosecuting the defendant for conduct toward other  
2 victims.

3 PLEA

4 2. Defendant waives venue and gives up the right to  
5 indictment by a grand jury and agrees to plead guilty to a  
6 single-count information as filed in United States v. Michael  
7 David Barrett, CR 09-1215-R.

8 NATURE OF THE OFFENSE

9 3. In order for defendant to be guilty of a violation of  
10 Title 18, United States Code, Section 2261A(2) (A), as charged in  
11 the information, the following must be true: (1) with the intent  
12 (a) to harass or (b) to cause substantial emotional distress;  
13 (2) to a person in another State; (3) defendant used the mail,  
14 any interactive computer service, or any facility of interstate  
15 or foreign commerce; (4) to engage in a course of conduct;  
16 (5) that causes substantial emotional distress to that person.  
17 Defendant admits that defendant is, in fact, guilty of this  
18 offense as described in the information.

19 PENALTIES

20 4. Pursuant to Title 18, United States Code, Section  
21 2261(b) (5), the statutory maximum sentence that the Court can  
22 impose for a violation of Title 18, United States Code, Section  
23 2261A(2) (A), as alleged in the information is 5 years  
24 imprisonment, a three-year period of supervised release, a fine  
25 of \$250,000, and a mandatory special assessment of \$100.

26 5. Supervised release is a period of time following  
27 imprisonment during which defendant will be subject to various  
28 restrictions and requirements. Defendant understands that if

1 defendant violates one or more of the conditions of any  
2 supervised release imposed, defendant may be returned to prison  
3 for all or part of the term of supervised release, which could  
4 result in defendant serving a total term of imprisonment greater  
5 than the statutory maximum stated above.

6 6. Defendant understands that, by pleading guilty,  
7 defendant may be giving up valuable government benefits and  
8 valuable civic rights, such as the right to vote, the right to  
9 possess a firearm, the right to hold office, and the right to  
10 serve on a jury.

11 7. Defendant further understands that the conviction in  
12 this case may subject defendant to various collateral  
13 consequences, including but not limited to deportation,  
14 revocation of probation, parole, or supervised release in another  
15 case, and suspension or revocation of a professional license.  
16 Defendant understands that unanticipated collateral consequences  
17 will not serve as grounds to withdraw defendant's guilty plea.

18 8. Defendant understands that defendant will be required  
19 to pay full restitution to Victim Andrews. Defendant agrees  
20 that, in return for the USAO's compliance with its obligations  
21 under this agreement, the amount of restitution is not restricted  
22 to the count to which defendant is pleading guilty and may  
23 include losses arising from charges not prosecuted pursuant to  
24 this agreement as well as all relevant conduct in connection with  
25 those charges.

26 FACTUAL BASIS

27 9. Defendant and the USAO agree and stipulate to the  
28 statement of facts provided below. This statement of facts

1 includes facts sufficient to support a plea of guilty to the  
2 charges described in this agreement and to establish the  
3 sentencing guideline factors set forth in paragraph 13 below. It  
4 is not meant to be a complete recitation of all facts relevant to  
5 the underlying criminal conduct or all facts known to defendant  
6 that relate to that conduct.

7           Between on or about January 28, 2008, and on or  
8           about July 22, 2009, in Los Angeles County, within the  
9           Central District of California, and elsewhere,  
10          defendant MICHAEL DAVID BARRETT, also known as ("aka")  
11          "Mark Bennett," aka "handsfouryou," aka  
12          "GOBLAZERS1" ("defendant BARRETT"), with the intent to  
13          harass and to cause substantial emotional distress to a  
14          person in another state, namely, Erin Andrews ("Victim  
15          Andrews"), used facilities of interstate commerce,  
16          including cellular telephone networks, electronic mail,  
17          interstate wires, and the Internet, to engage in a  
18          course of conduct that caused substantial emotional  
19          distress to Victim Andrews.

20          Defendant's course of conduct included, amongst  
21          other things, the following:

22          On or about January 28, 2008, and January 29,  
23          2008, when Victim Andrews was in a different state from  
24          defendant BARRETT, defendant BARRETT used his cellular  
25          phone to make calls to approximately seven (7) hotels  
26          in Columbus, Ohio, to identify where Victim Andrews  
27          would be staying beginning on February 4, 2008. On or  
28          about January 29, 2008, when Victim Andrews was in a

1 different state from defendant BARRETT, defendant  
2 BARRETT used the interstate wires to make a reservation  
3 at a hotel in Columbus, Ohio (the "Columbus hotel"),  
4 where he knew that Victim Andrews would be staying.

5 On or about February 4, 2008, defendant BARRETT  
6 traveled from Illinois to Ohio. On or about February  
7 4, 2008, defendant BARRETT stayed in the hotel room  
8 next door to Victim Andrews in the Columbus hotel. On  
9 or about February 4, 2008, defendant BARRETT  
10 temporarily removed the peephole device in the door of  
11 the room in the Columbus hotel in which Victim Andrews  
12 was staying. On or about February 5, 2008, defendant  
13 BARRETT surreptitiously shot through the Columbus hotel  
14 room's peephole a video of Victim Andrews naked in the  
15 room (the "Columbus video") without Victim Andrews'  
16 knowledge or consent. On or about February 5, 2008,  
17 defendant BARRETT used the Internet to send the  
18 Columbus video to an e-mail account that he controlled.  
19 On or about February 6, 2008, defendant BARRETT paid  
20 for his room in the Columbus hotel using American  
21 Express credit card number XXXX XXXXXX X2007, a  
22 transaction that used the interstate wires.

23 On or about February 20, 2008, defendant BARRETT,  
24 using American Express credit card number XXXX XXXXXX  
25 X0067, purchased on the Internet a "People Search" of  
26 Victim Andrews and obtained personal information  
27 related to Victim Andrews.  
28

1 On or about July 28, 2008, defendant BARRETT  
2 purchased with a credit card an LG Shine cellular phone  
3 with a video camera. On or about July 28, 2008, and  
4 July 29, 2008, defendant BARRETT used his LG Shine  
5 cellular phone to make calls to approximately 14 hotels  
6 in Milwaukee, Wisconsin, to identify where Victim  
7 Andrews would be staying on July 29, 2008, and July 30,  
8 2008. On or about July 29, 2008, defendant BARRETT  
9 used his LG Shine cellular phone to call a hotel in  
10 Milwaukee, Wisconsin, where Victim Andrews would be  
11 staying on July 29, 2008, and made a room reservation  
12 for himself using his Capital One Mastercard numbered  
13 numbered XXXX XXXX XXXX 3209. On or about July 30,  
14 2008, defendant BARRETT traveled from Illinois to  
15 Wisconsin. On or about July 30, 2008, defendant  
16 BARRETT altered the peephole device in the door of the  
17 hotel room in Milwaukee, Wisconsin, in which Victim  
18 Andrews was staying.

19 On or about September 2, 2008, defendant BARRETT  
20 called a hotel in Nashville, Tennessee, where Victim  
21 Andrews would be staying on September 4, 2008, and made  
22 a room reservation for himself on September 4, 2008,  
23 specifically requesting a room adjoining Victim  
24 Andrews' room. On or about September 2, 2008,  
25 defendant BARRETT caused a confirmation of his  
26 Nashville hotel reservation to be sent via the Internet  
27 to his work e-mail address.

28

1 On or about September 4, 2008, defendant BARRETT  
2 traveled from Illinois to Tennessee. On or about  
3 September 4, 2008, defendant BARRETT altered the  
4 peephole device in the door of the Nashville hotel room  
5 in which Victim Andrews was staying. On or about  
6 September 4, 2008, defendant BARRETT surreptitiously  
7 shot through the Nashville hotel room's peephole  
8 several videos of Victim Andrews naked in her Nashville  
9 hotel room (collectively with the Columbus video, "the  
10 videos") without Victim Andrews' knowledge or consent.  
11 On or about September 4, 2008, defendant BARRETT sent  
12 three of the videos from his phone to his e-mail  
13 account, handsfouryou@yahoo.com. On or about September  
14 5, 2008, defendant BARRETT paid for his stay at the  
15 Nashville hotel using his American Express credit card  
16 numbered XXXX XXXXXX X1009 and his Capital One  
17 Mastercard numbered XXXX XXXX XXXX 3209.

18 On or about January 28, 2009, defendant BARRETT,  
19 using the alias "Mark Bennett" and the e-mail account  
20 handsfouryou@yahoo.com, sent an electronic mail  
21 regarding the videos to TMZ.com in Los Angeles,  
22 California. On or about January 29, 2009, using the  
23 alias "Mark Bennett" and the e-mail account  
24 handsfouryou@yahoo.com, defendant BARRETT sent an  
25 electronic mail regarding the videos to TMZ.com in Los  
26 Angeles, California.

1 On or about February 2, 2009, defendant BARRETT  
2 made interstate phone calls to attempt to locate a  
3 hotel at which Victim Andrews was scheduled to stay.

4 On or about February 12, 2009, defendant BARRETT  
5 used the Internet from Columbia, South Carolina, when  
6 Victim Andrews was in a different state, to create an  
7 account on the website Google Video. On or about  
8 February 12, 2009, defendant BARRETT used the Internet,  
9 and specifically the Google Video account described  
10 above, from Columbia, South Carolina, when Victim  
11 Andrews was in a different state, to post one of the  
12 videos to the Internet with the intent to harass and  
13 cause substantial emotional distress to Victim Andrews.  
14 On or about February 12, 2009, when Victim Andrews was  
15 in a different state, defendant BARRETT, with the  
16 intent to harass and cause substantial emotional  
17 distress to Victim Andrews, named the video that he  
18 posted on Google Video "Erin Andrews Naked Butt."

19 On or about each of February 16, March 1, March 5,  
20 and March 11, 2009, when Victim Andrews was in a  
21 different state, with the intent to harass and cause  
22 substantial emotional distress to Victim Andrews,  
23 defendant BARRETT used the Internet and the screenname  
24 "GOBLAZERS1" to post videos to a French website. On or  
25 about February 16, 2009, when Victim Andrews was in a  
26 different state, with the intent to harass and cause  
27 substantial emotional distress to Victim Andrews,  
28 defendant BARRETT used the Internet to label one of the



1 videos "Sexy and Hot Blonde Sports celebrity shows us  
2 her all."

3 On or about July 17, 2009, Victim Andrews became  
4 aware of the videos while in Los Angeles County and  
5 suffered substantial emotional distress.

6 WAIVER OF CONSTITUTIONAL RIGHTS

7 10. By pleading guilty, defendant gives up the following  
8 rights:

9 a) The right to persist in a plea of not guilty.

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

11 c) The right to the assistance of legal counsel at  
12 trial, including the right to have the Court appoint counsel for  
13 defendant for the purpose of representation at trial. (In this  
14 regard, defendant understands that, despite his plea of guilty,  
15 he retains the right to be represented by counsel - and, if  
16 necessary, to have the court appoint counsel if defendant cannot  
17 afford counsel - at every other stage of the proceedings.)

18 d) The right to be presumed innocent and to have the  
19 burden of proof placed on the government to prove defendant  
20 guilty beyond a reasonable doubt.

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

23 f) The right, if defendant wished, to testify on  
24 defendant's own behalf and present evidence in opposition to the  
25 charges, including the right to call witnesses and to subpoena  
26 those witnesses to testify.

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

4 By pleading guilty, defendant also gives up any and all  
5 rights to pursue any affirmative defenses, Fourth Amendment or  
6 Fifth Amendment claims, and other pretrial motions that have been  
7 filed or could be filed.

8 WAIVER OF DNA TESTING

9 11. Defendant has been advised that the Federal Bureau of  
10 Investigation has in its possession numerous items seized from  
11 defendant's person and residence on or about October 2, 2009, as  
12 well as peephole devices taken from the doors of hotel rooms in  
13 Nashville, Tennessee, and Milwaukee, Wisconsin, all of which  
14 could be subjected to DNA testing. Defendant understands that  
15 the USAO does not intend to conduct such DNA testing. Defendant  
16 understands that, before entering a guilty plea pursuant to this  
17 agreement, defendant could request DNA testing of evidence in  
18 this case. Defendant further understands that, with respect to  
19 the offense to which defendant is pleading guilty pursuant to  
20 this agreement, defendant would have the right to request DNA  
21 testing of evidence after conviction under the conditions  
22 specified in 18 U.S.C. § 3600. Knowing and understanding  
23 defendant's right to request DNA testing, defendant knowingly and  
24 voluntarily gives up that right with respect to both the specific  
25 item listed above and any other items of evidence there may be in  
26 this case that might be amenable to DNA testing. Defendant  
27 understands and acknowledges that by giving up this right,  
28 defendant is giving up any ability to request DNA testing of

1 evidence in this case in the current proceeding, in any  
 2 proceeding after conviction under 18 U.S.C. § 3600, and in any  
 3 other proceeding of any type. Defendant further understands and  
 4 acknowledges that by giving up this right, defendant will never  
 5 have another opportunity to have the evidence in this case,  
 6 whether or not listed above, submitted for DNA testing, or to  
 7 employ the results of DNA testing to support a claim that  
 8 defendant is innocent of the offense to which defendant is  
 9 pleading guilty.

10 SENTENCING FACTORS

11 12. Defendant understands that the Court is required to  
 12 consider the United States Sentencing Guidelines ("U.S.S.G." or  
 13 "Sentencing Guidelines") among other factors in determining  
 14 defendant's sentence. Defendant understands, however, that the  
 15 Sentencing Guidelines are only advisory, and that after  
 16 considering the Sentencing Guidelines, the Court may be free to  
 17 exercise its discretion to impose any reasonable sentence up to  
 18 the maximum set by statute for the crime of conviction.

19 13. Defendant and the USAO agree and stipulate to the  
 20 following applicable sentencing guideline factors:

21	Base Offense Level	:	18	U.S.S.G. § 2A6.2(a)
22	Pattern of Activity Involving Stalking			
23	the Same Victim	:	+2	U.S.S.G. § 2A6.2(b)(1)(D)
24	Acceptance of Responsibility	:	<u>-3</u>	U.S.S.G. § 3E1.1
25	Total offense level	:	17	

1 The USAO will agree to a downward adjustment for acceptance of  
2 responsibility (and, if applicable, move for an additional level  
3 under § 3E1.1(b)) only if the conditions set forth in paragraph  
4 17) are met. Subject to paragraph 16, defendant and the USAO  
5 agree not to seek, argue, or suggest in any way, either orally or  
6 in writing, that any other specific offense characteristics,  
7 adjustments or departures, relating to either the applicable  
8 Offense Level or the Criminal History Category, be imposed. If,  
9 however, after signing this agreement but prior to sentencing,  
10 defendant were to commit an act, or the USAO were to discover a  
11 previously undiscovered act committed by defendant prior to  
12 signing this agreement, which act, in the judgment of the USAO,  
13 constituted obstruction of justice within the meaning of U.S.S.G.  
14 § 3C1.1, the USAO would be free to seek the enhancement set forth  
15 in that section.

16 14. There is no agreement as to defendant's criminal  
17 history or criminal history category.

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

22 16. The stipulations in this agreement do not bind either  
23 the United States Probation Office or the Court. Both defendant  
24 and the USAO are free to: (a) supplement the facts by supplying  
25 relevant information to the United States Probation Office and  
26 the Court, (b) correct any and all factual misstatements relating  
27 to the calculation of the sentence, and (c) argue on appeal and  
28 collateral review that the Court's sentencing guidelines

1 calculations are not error, although each party agrees to  
2 maintain its view that the calculations in paragraph 13 are  
3 consistent with the facts of this case.

4 DEFENDANT'S OBLIGATIONS

5 17. Defendant agrees that he will:

6 a) Plead guilty as set forth in this agreement.

7 b) Not knowingly and willfully fail to abide by all  
8 sentencing stipulations contained in this agreement.

9 c) Not knowingly and willfully fail to: (i) appear as  
10 ordered for all court appearances, (ii) surrender as ordered for  
11 service of sentence, (iii) obey all conditions of any bond, and  
12 (iv) obey any other ongoing court order in this matter.

13 d) Not commit any crime; however, offenses which  
14 would be excluded for sentencing purposes under U.S.S.G.  
15 § 4A1.2(c) are not within the scope of this agreement.

16 e) Not knowingly and willfully fail to be truthful at  
17 all times with Pretrial Services, the U.S. Probation Office, and  
18 the Court.

19 f) Pay the applicable special assessment at or before  
20 the time of sentencing, unless defendant lacks the ability to  
21 pay.

22 CONSENT TO PROTECTIVE ORDER AND WAIVER OF 18 U.S.C. § 1514(b) (1)  
23 PROCEDURES

24 18. In addition to defendant's obligations set forth in  
25 paragraph 17 above, defendant further agrees that he will consent  
26 to the entry of a protective order pursuant to 18 U.S.C.  
27 § 1514(b) (1) in both the instant criminal case and in a parallel  
28 miscellaneous civil case that restrains defendant from harassing,  
coming within 100 yards of, or otherwise contacting or attempting

1 to contact Erin Andrews ("Victim Andrews") or her family,  
2 including but not limited to her parents, siblings, other  
3 relatives, any spouse or significant other with whom Victim  
4 Andrews may share an intimate relationship (whether existing now  
5 or during the pendency of any term of the protective order  
6 entered by the Court), and any children of Victim Andrews  
7 (collectively, "victim's family") for a period of three years and  
8 agrees that such order will be stayed such that it becomes  
9 effective or "issues," as that term is used in 18 U.S.C.  
10 § 1514(b)(4), beginning on the first date of any term of  
11 supervised release imposed on the defendant (the "federal  
12 protective order").

13 19. The defendant understands that, the federal protective  
14 order may be renewed if, at any time within ninety (90) days  
15 before the expiration of the protective order, an attorney for  
16 the United States applies for a new protective order pursuant to  
17 18 U.S.C. § 1514, and the Court grants such application.  
18 Defendant agrees not to oppose an application by an attorney on  
19 behalf of the United States for a new order for an additional  
20 term of three years pursuant to 18 U.S.C. § 1514(b)(4), provided  
21 the new order is sought during the time that the Court retains  
22 jurisdiction over the federal protective order.

23 20. The defendant understands and agrees that the federal  
24 protective order may be subject to modification by the Court upon  
25 motion of either party, or *sua sponte* by the Court, provided that  
26 each party is afforded notice and a meaningful opportunity to be  
27 heard regarding any proposed modification to the order. The  
28 provision of such notice to Victim Andrews by defendant shall be

1 made by notice to the Victim-Witness Coordinator for the United  
2 States Attorney's Office for the Central District of California.

3 21. The defendant further understands and agrees that a  
4 violation of the federal protective order may be considered  
5 contempt of court, which may expose him to additional penalties.

6 22. The defendant further knowingly and voluntarily agrees  
7 and consents to the filing of a parallel, miscellaneous civil  
8 case pursuant to 18 U.S.C. § 1514 so that the Court can and will  
9 retain jurisdiction over the federal protective order in that  
10 miscellaneous civil case, beyond the termination of any period of  
11 incarceration and supervised release, and the corresponding  
12 termination of the Court's jurisdiction in the criminal case.  
13 The defendant knowingly, voluntarily and specifically agrees and  
14 consents to the Court's maintaining jurisdiction over the federal  
15 protective order in this fashion.

16 23. The defendant understands that 18 U.S.C. § 1514  
17 contemplates the filing of a separate civil action by the United  
18 States by complaint, and in which he would be a civil defendant.  
19 The defendant further understands that, under 18 U.S.C.  
20 § 1514(b)(1), the Court may issue a protective order prohibiting  
21 harassment of a victim in a federal criminal case if the Court,  
22 after a hearing, finds by a preponderance of the evidence that  
23 harassment of an identified victim or witness in a federal  
24 criminal case exists. The defendant understands that, at such  
25 hearing, he has the right to present evidence and cross-examine  
26 witnesses. The defendant knowingly and voluntarily waives the  
27 filing of a separate civil action by the United States by  
28 complaint; knowingly and voluntarily agrees to the opening of a

1 parallel, miscellaneous civil case pursuant to 18 U.S.C. § 1514  
2 for that purpose; and knowingly and voluntarily agrees that the  
3 Court may consider the United States's motion for the federal  
4 protective order at the sentencing hearing in this case; and  
5 knowingly and voluntarily agrees that the sentencing proceedings  
6 in this case shall also serve as the hearing required by 18  
7 U.S.C. § 1514(b)(1), and that defendant has been given adequate  
8 notice of such a hearing.

9       24. The defendant knowingly and voluntarily waives any  
10 other procedures, requirements or proceedings pursuant to 18  
11 U.S.C. § 1514 and understands that by knowingly and voluntarily  
12 consenting to both the federal protective order and the  
13 procedures outlined above, he waives and gives up any further  
14 rights afforded to him under 18 U.S.C. § 1514. In addition,  
15 defendant understands that, if the proposed federal protective  
16 order and procedure is accepted by the Court, there will not be  
17 further proceedings other than those set forth above before the  
18 entry of the federal protective order. The defendant knowingly  
19 and voluntarily agrees with and consents to the waiver of such  
20 Section 1514 rights and procedures.

21       25. In addition, defendant agrees not to oppose any  
22 restraining order which may be sought against him by Victim  
23 Andrews in any state or local court within ten years from the  
24 date of sentencing.

25                                   THE USAO'S OBLIGATIONS

26       26. If defendant complies fully with all defendant's  
27 obligations under this agreement, the USAO agrees:  
28



1 a) To abide by all sentencing stipulations contained in  
2 this agreement.

3 b) Except for criminal tax violations (including  
4 conspiracy to commit such violations chargeable under 18 U.S.C.  
5 § 371), not to further prosecute defendant for violations of 18  
6 U.S.C. § 2261A arising out of defendant's taking (and later  
7 posting) of videos through peepholes of women in their hotel  
8 rooms where defendant later posted the videos to DailyMotion.com  
9 and Flickr! between on or about February 16, 2009, and on or  
10 about June 22, 2009. Defendant understands that the USAO and all  
11 other federal, state, or local prosecuting or regulatory  
12 authorities are free to prosecute defendant for any other  
13 unlawful past conduct, or any unlawful conduct that occurs after  
14 the date of this agreement. Defendant also understands that the  
15 USAO and the FBI in Los Angeles are not prohibited from assisting  
16 all other federal, state, and local prosecuting, investigating,  
17 and regulatory agencies in prosecuting defendant's conduct in  
18 relation to the taking through peepholes and posting of the  
19 videos of the nude women in their hotel rooms. Defendant agrees  
20 that at the time of sentencing the Court may consider the  
21 uncharged conduct in determining the applicable Sentencing  
22 Guidelines range, where the sentence should fall within that  
23 range, the propriety and extent of any departure from that range,  
24 and the determination of the sentence to be imposed after  
25 consideration of the sentencing guidelines and all other relevant  
26 factors.

27 c) At the time of sentencing, provided that defendant  
28 demonstrates an acceptance of responsibility for the offense up

1 to and including the time of sentencing, to recommend a two-level  
2 reduction in the applicable sentencing guideline offense level,  
3 pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary,  
4 move for an additional one-level reduction if available under  
5 that section.

6 d) Not to seek a sentence of imprisonment above the  
7 mid-point of the Sentencing Guidelines range for imprisonment  
8 that corresponds to an offense level of 17 and defendant's  
9 criminal history category as calculated by the Court.

10 BREACH OF AGREEMENT

11 27. If defendant, at any time between the execution of this  
12 agreement and defendant's sentencing on a non-custodial sentence  
13 or surrender for service on a custodial sentence, knowingly  
14 violates or fails to perform any of defendant's obligations under  
15 this agreement ("a breach"), the USAO may declare this agreement  
16 breached. If the USAO declares this agreement breached, and the  
17 Court finds such a breach to have occurred, defendant will not be  
18 able to withdraw defendant's guilty plea, and the USAO will be  
19 relieved of all of their obligations under this agreement.

20 28. Following a knowing and willful breach of this  
21 agreement by defendant, should the USAO elect to pursue any  
22 charge that was either dismissed or not filed as a result of this  
23 agreement, then:

24 a) Defendant agrees that any applicable statute of  
25 limitations is tolled between the date of defendant's signing of  
26 this agreement and the commencement of any such prosecution or  
27 action.

28

1           b) Defendant gives up all defenses based on the statute  
2 of limitations, any claim of preindictment delay, or any speedy  
3 trial claim with respect to any such prosecution, except to the  
4 extent that such defenses existed as of the date of defendant's  
5 signing of this agreement.

6           c) Defendant agrees that: i) any statements made by  
7 defendant, under oath, at the guilty plea hearing; ii) the  
8 stipulated factual basis statement in this agreement; and  
9 iii) any evidence derived from such statements, are admissible  
10 against defendant in any future prosecution of defendant, and  
11 defendant shall assert no claim under the United States  
12 Constitution, any statute, Rule 410 of the Federal Rules of  
13 Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure,  
14 or any other federal rule, that the statements or any evidence  
15 derived from any statements should be suppressed or are  
16 inadmissible.

17           LIMITED MUTUAL WAIVER OF APPEAL AND COLLATERAL ATTACK

18           29. Defendant gives up the right to appeal any sentence  
19 imposed by the Court, including any order of restitution, and the  
20 manner in which the sentence is determined, provided that (a) the  
21 sentence is within the statutory maximum specified above and is  
22 constitutional, and (b) the Court imposes a sentence within or  
23 below the range corresponding to a total offense level of 17, and  
24 the applicable criminal history category as determined by the  
25 Court. Notwithstanding the foregoing, defendant retains any  
26 ability defendant has to appeal the Court's determination of  
27 defendant's criminal history category and the conditions of  
28

1 supervised release imposed by the Court, with the exception of  
2 the following:

3 a. Standard conditions set forth in district court  
4 General Orders 318 and 01-05;

5 b. Defendant shall cooperate in the collection of a  
6 DNA sample from defendant.

7 c. Defendant shall participate in mental health  
8 treatment as directed by the Probation Officer, which may include  
9 medication, testing, evaluation, counseling, and residential  
10 treatment until discharged by the treatment provider with the  
11 approval of the Probation Officer; however, the defendant retains  
12 the right to appeal any supervised release condition requiring  
13 residential treatment unless such residential treatment is  
14 imposed pursuant to court approval;

15 d. Defendant shall abide by all rules, requirements,  
16 and conditions of such mental health treatment and shall take all  
17 medication in the manner and dosage prescribed by his mental  
18 health and/or other health care provider(s), including by  
19 injection;

20 e. The Probation Officer shall disclose the  
21 Presentence Report and/or any previous mental health evaluations  
22 to the mental health and/or other medical treatment provider;

23 f. The defendant shall not contact, or attempt to  
24 contact, Victim Andrews or her family, including but not limited  
25 to her parents, siblings, other relatives, any spouse or  
26 significant other with whom victim may share an intimate  
27 relationship (whether existing now or during the pendency of any  
28 term of supervised release), and any children of Victim Andrews,

1 directly or indirectly by any means, including but not limited to  
2 in person, by mail, telephone, email, text message, or otherwise  
3 via the internet or other electronic means, or through a third  
4 party;

5 g. The defendant shall not attempt to locate Victim  
6 Andrews or her family or attempt to obtain information concerning  
7 the whereabouts, phone numbers, email addresses, or other  
8 personal identifiers of Victim Andrews or victim's family;

9 h. The defendant shall remain at least 100 yards from  
10 Victim Andrews at all times;

11 i. The defendant shall not travel on any commercial  
12 airline without prior approval of the Probation Officer;

13 j. The defendant shall not stay in a hotel without  
14 prior approval of the Probation Officer;

15 k. The defendant's employment shall be approved by  
16 the Probation Officer, and any change in employment must be pre-  
17 approved by the Probation Officer. The defendant shall submit  
18 the name and address of the proposed employer to the Probation  
19 Officer at least 10 days prior to any scheduled change.

20 Defendant agrees and understands that his employment information  
21 shall be provided to the Victim Andrews or her representatives by  
22 the Probation Office.

23 l. The defendant's residence shall be approved by the  
24 Probation Officer, and any change in residence must be pre-  
25 approved by the Probation Officer. The defendant shall submit  
26 the address of the proposed residence to the Probation Officer at  
27 least 10 days prior to any scheduled move. Defendant agrees and  
28

1 understands that his residence information shall be provided to  
2 Victim Andrews by the Probation Office.

3 30. The USAO gives up its right to appeal the sentence,  
4 provided that (a) the Court in determining the applicable  
5 guideline range does not depart downward in offense level or  
6 criminal history category, (b) the Court determines that the  
7 total offense level is 17 or above, and (c) the Court imposes a  
8 sentence within or above the range corresponding to the  
9 determined total offense level and criminal history category.

10 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

11 31. Defendant agrees that if any count of conviction is  
12 vacated, reversed, or set aside, the USAO may: (a) ask the Court  
13 to resentence defendant on any remaining count of conviction,  
14 with both the USAO and defendant being released from any  
15 stipulations regarding sentencing contained in this agreement,  
16 (b) ask the Court to void the entire plea agreement and vacate  
17 defendant's guilty plea on any remaining count of conviction,  
18 with both the USAO and defendant being released from all of their  
19 obligations under this agreement, or (c) leave defendant's  
20 remaining conviction, sentence, and plea agreement intact.  
21 Defendant agrees that the choice among these three options rests  
22 in the exclusive discretion of the USAO.

23 COURT NOT A PARTY

24 32. The Court is not a party to this agreement and need not  
25 accept any of the USAO's sentencing recommendations or the  
26 parties' stipulations. Even if the Court ignores any sentencing  
27 recommendation, finds facts or reaches conclusions different from  
28 any stipulation, and/or imposes any sentence up to the maximum

1 established by statute, defendant cannot, for that reason,  
2 withdraw defendant's guilty plea, and defendant will remain bound  
3 to fulfill all defendant's obligations under this agreement. No  
4 one - not the prosecutor, defendant's attorney, or the Court -  
5 can make a binding prediction or promise regarding the sentence  
6 defendant will receive, except that it will be within the  
7 statutory maximum.

8 NO ADDITIONAL AGREEMENTS

9 33. Except as set forth herein, there are no promises,  
10 understandings or agreements between the USAO and defendant or  
11 defendant's counsel. Nor may any additional agreement,  
12 understanding or condition be entered into unless in a writing  
13 signed by all parties or on the record in court.

14 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING


15 34. The parties agree and stipulate that this Agreement  
16 will be considered part of the record of defendant's guilty plea  
17 hearing as if the entire Agreement had been read into the record  
18 of the proceeding.

19 This agreement is effective upon signature by defendant and  
20 an Assistant United States Attorney.

21 AGREED AND ACCEPTED

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

24 GEORGE S. CARDONA  
25 Acting United States Attorney

26   
27 \_\_\_\_\_  
28 WESLEY L. HSU  
Assistant United States Attorney  
Chief, Cyber and Intellectual  
Property Crimes Section

12/10/09  
\_\_\_\_\_  
Date

1 I have read this agreement and carefully discussed every  
2 part of it with my attorney. I understand the terms of this  
3 agreement, and I voluntarily agree to those terms. My attorney  
4 has advised me of my rights, of possible defenses, of the  
5 Sentencing Guideline provisions, and of the consequences of  
6 entering into this agreement. No promises or inducements have  
7 been made to me other than those contained in this agreement. No  
8 one has threatened or forced me in any way to enter into this  
9 agreement. Finally, I am satisfied with the representation of my  
10 attorney in this matter.

11

12 Michael D Barrett  
13 MICHAEL DAVID BARRETT  
14 Defendant

12/10/09  
Date

14

15 I am Michael David Barrett's attorney. I have carefully  
16 discussed every part of this agreement with my client. Further,  
17 I have fully advised my client of his rights, of possible  
18 defenses, of the Sentencing Guidelines' provisions, and of the  
19 consequences of entering into this agreement. To my knowledge,  
20 my client's decision to enter into this agreement is an informed  
21 and voluntary one.

22

23 David Willingham  
24 DAVID WILLINGHAM  
25 ANDREW ESBENSHADE  
26 Caldwell, Leslie & Proctor PC  
27 Counsel for Defendant  
28 Michael David Barrett

12/10/09  
Date