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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

6 Attorneys for Plaintiff
United States of America
7

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 MARCUS BUTLER,
15 Defendant.

CASE NO. 2:17-CR-00158 JAM
PLEA AGREEMENT

17 **I. INTRODUCTION**

18 **A. Scope of Agreement.**

19 The indictment in this case charges the defendant Marcus Butler in Count One with Conspiracy
20 to Commit Access Device Fraud, in violation of 18 U.S.C. § 371 and in Counts Two and Three with
21 Access Device Fraud, in violation of 18 U.S.C. § 1029(a)(2). The defendant agrees to plead guilty to
22 Count Three charging him with Access Device Fraud. This document contains the complete plea
23 agreement between the United States Attorney’s Office for the Eastern District of California (the
24 “government”) and the defendant regarding this case. This plea agreement is limited to the United
25 States Attorney’s Office for the Eastern District of California and cannot bind any other federal, state, or
26 local prosecuting, administrative, or regulatory authorities.
27
28

1 **B. Court Not a Party.**

2 The Court is not a party to this plea agreement. Sentencing is a matter solely within the
3 discretion of the Court, and the Court may take into consideration any and all facts and circumstances
4 concerning the criminal activities of defendant, including activities which may not have been charged in
5 the indictment. The Court is under no obligation to accept any recommendations made by the
6 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
7 including the statutory maximum stated in this plea agreement.

8 If the Court should impose any sentence up to the maximum established by the statute, the
9 defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all
10 of the obligations under this plea agreement. The defendant understands that neither the prosecutor,
11 defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will
12 receive.

13 **II. DEFENDANT'S OBLIGATIONS**

14 **A. Guilty Plea.**

15 The defendant will plead guilty to Count Three, charging him with Access Device Fraud, in
16 violation of Title 18, United States Code Section 1029(a)(2). The defendant agrees that he is in fact
17 guilty of these charges and that the facts set forth in the Factual Basis for Plea attached hereto as Exhibit
18 A are accurate.

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

22 The defendant agrees that the statements made by him in signing this Agreement, including the
23 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
24 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
25 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
26 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
27 Agreement generally.
28

1 **B. Restitution.**

2 The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of
3 certain offenses. Defendant agrees that his conduct is governed by the Mandatory Restitution Act
4 pursuant to 18 U.S.C. § 3663A(c)(1)(A)(ii) and agrees to pay the full amount of restitution to all victims
5 affected by this offense, including, but not limited to, the victims covered in the factual basis, victims
6 covered in those counts to be dismissed as part of the plea agreement pursuant to 18 U.S.C.
7 § 3663A(a)(3), and other victims as a result of the defendant's conduct for the offenses charged from the
8 periods of February 2013 through August 2013. The parties estimate that amount of restitution will be
9 approximately \$353,000 dollars.

10 Defendant further agrees that he will not seek to discharge any restitution obligation or any part
11 of such obligation in any bankruptcy proceeding.

12 Payment of restitution shall be by cashier's or certified check made payable to the Clerk of the
13 Court.

14 **C. Fine.**

15 The defendant reserves the right to argue to Probation and at sentencing that he is unable to pay a
16 fine, and that no fine should be imposed. The defendant understands that it is his burden to affirmatively
17 prove that he is unable to pay a fine, and agrees to provide a financial statement under penalty of perjury
18 to the Probation Officer and the government in advance of the issuance of the draft Presentence
19 Investigation Report, along with supporting documentation. The government retains the right to oppose
20 the waiver of a fine. If the Court imposes a fine, the defendant agrees to pay such fine if and as ordered
21 by the Court, up to the statutory maximum fine for the defendant's offense.

22 **D. Special Assessment.**

23 The defendant agrees to pay a special assessment of \$100.00 at the time of sentencing by
24 delivering a check or money order payable to the United States District Court to the United States
25 Probation Office immediately before the sentencing hearing. The defendant understands that this plea
26 agreement is voidable at the option of the government if he fails to pay the assessment prior to that
27 hearing. If the defendant is unable to pay the special assessment at the time of sentencing, he agrees to
28 earn the money to pay the assessment, if necessary by participating in the Inmate Financial

1 Responsibility Program.

2 **E. Violation of Plea Agreement by Defendant/Withdrawal of Plea.**

3 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
4 his plea, this plea agreement is voidable at the option of the government. If the government elects to
5 void the agreement based on the defendant's violation, the government will no longer be bound by its
6 representations to the defendant concerning the limits on criminal prosecution and sentencing as set
7 forth herein. A defendant violates the plea agreement by committing any crime or providing or
8 procuring any statement or testimony which is knowingly false, misleading, or materially incomplete in
9 any litigation or sentencing process in this case, or engages in any post-plea conduct constituting
10 obstruction of justice. Varying from stipulated Guidelines application or agreements regarding
11 arguments as to 18 United States Code section 3553, as set forth in this agreement, personally or through
12 counsel, also constitutes a violation of the plea agreement. The government also shall have the right (1)
13 to prosecute the defendant on any of the counts to which he pleaded guilty; (2) to reinstate any counts
14 that may be dismissed pursuant to this plea agreement; and (3) to file any new charges that would
15 otherwise be barred by this plea agreement. The defendant shall thereafter be subject to prosecution for
16 any federal criminal violation of which the government has knowledge. The decision to pursue any or
17 all of these options is solely in the discretion of the United States Attorney's Office.

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

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

9 **F. Asset Disclosure.**

10 The defendant agrees to make a full and complete disclosure of his assets and financial
11 condition, and will complete the United States Attorney's Office's "Authorization to Release
12 Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change
13 of plea, including supporting documentation. The defendant also agrees to have the Court enter an order
14 to that effect. The defendant understands that if he fails to complete truthfully and provide the described
15 documentation to the United States Attorney's office within the allotted time, he will be considered in
16 violation of the agreement, and the government shall be entitled to the remedies set forth in section II.E
17 above, above.

18 **III. THE GOVERNMENT'S OBLIGATIONS**

19 **A. Dismissals/Other Charges.**

20 The government agrees to move, at the time of sentencing, to dismiss without prejudice the
21 remaining counts in the pending indictment. The government also agrees not to reinstate any dismissed
22 count except if this agreement is voided as set forth herein, or as provided in paragraphs II.E (Violation
23 of Plea Agreement by Defendant/Withdrawal of Plea), VI.B (Stipulated Guideline Calculation), and
24 VII.B (Waiver of Appeal and Collateral Attack) herein.

25 **B. Recommendations.**

26 1. **Incarceration Range.**

27 The government will recommend that the defendant be sentenced to the low end of the
28 applicable guideline range as determined by the Court.

1 2. Acceptance of Responsibility.

2 The government will recommend a two-level reduction (if the offense level is less than
3 16) or a three-level reduction (if the offense level reaches 16) in the computation of his offense level if
4 the defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G.
5 § 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation
6 of the pre-sentence report, being truthful and candid with the probation officer, and not otherwise
7 engaging in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either
8 in the preparation of the pre-sentence report or during the sentencing proceeding.

9 C. Use of Information for Sentencing.

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

15 IV. ELEMENTS OF THE OFFENSE

16 At a trial, the government would have to prove beyond a reasonable doubt the following
17 elements of the offense to which the defendant is pleading guilty, Access Device Fraud, in violation of
18 Title 18, United States Code Section 1029(a)(2):

19 First, the defendant knowingly used the unauthorized access devices at any time during a
20 one-year period, including that between February 2013 and August 2013;

21 Second, by using the unauthorized access devices during that period, the defendant
22 obtained anything of value worth \$1,000 or more, or things of value, their value together totaling \$1,000
23 or more, during that period;

24 Third, the defendant acted with the intent to defraud; and

25 Fourth, the defendant's conduct in some way affected commerce between one state and
26 other states, or between a state of the United States and a foreign country.

27 An "unauthorized access device" is any access device that is lost, stolen, expired,
28 revoked, canceled, or obtained with intent to defraud.

1 The defendant fully understands the nature and elements of the crimes charged in the indictment
2 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
3 his attorney.

4 V. MAXIMUM SENTENCE

5 A. Maximum Penalty.

6 The maximum sentence that the Court can impose is 10 years of incarceration, a fine of
7 \$250,000, a three-year period of supervised release and a special assessment of \$100.00. By signing this
8 plea agreement, the defendant also agrees that the Court can order the payment of restitution for the full
9 loss caused by the defendant's wrongful conduct. The defendant agrees that the restitution order is not
10 restricted to the amounts alleged in the specific count to which he is pleading guilty. The defendant
11 further agrees, as noted above, that he will not attempt to discharge in any present or future bankruptcy
12 proceeding any restitution imposed by the Court.

13 B. Violations of Supervised Release.

14 The defendant understands that if he violates a condition of supervised release at any time during
15 the term of supervised release, the Court may revoke the term of supervised release and require the
16 defendant to serve up to two (2) additional years imprisonment.

17 VI. SENTENCING DETERMINATION

18 A. Statutory Authority.

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

1 **B. Stipulations Affecting Guideline Calculation:**

2 The government and the defendant agree that there is no material dispute as to the following
3 sentencing guidelines variables and therefore stipulate to the following:

4 1. Base Offense Level: 6

5 The base offense level is six because the statutory maximum for a conviction under 18 U.S.C.
6 § 1029(a)(2) is 10 years. *See* U.S.S.G. § 2B1.1(a)(2) & Appendix A; 18 U.S.C. § 1029(c)(1)(A)(i).

7 2. Loss Amount: + 12

8 The loss amount caused by the defendant's use of the authorized access device—to wit, his
9 revoked or cancelled debit card—is approximately \$353,000, including relevant conduct under U.S.S.G.
10 § 1B1.3. Therefore, the offense level is increased by twelve under U.S.S.G. § 2B1.1(b)(1)(G).

11 3. Role in the Offense Adjustment: N/A

12 The parties agree that no aggravating or mitigating role adjustments apply to the defendant or his
13 conduct under U.S.S.G. § 3B1.1 or § 3B1.2.

14 4. Acceptance of Responsibility: -3

15 See paragraph III.B.2 above.

16 5. Criminal History: No Agreement

17 The parties do not have any agreements as to the defendant's criminal history. The defendant is
18 permitted to object or otherwise challenge any criminal history calculations determined by the Probation
19 Officer and he preserves the right to argue that his criminal history category substantially over-
20 represents the seriousness of his criminal history, if any, under U.S.S.G. § 4A1.3(b). For its part, the
21 government is permitted to argue in support of any such calculations by the Probation Officer.

22 6. Departures or Other Enhancements or Reductions:

23 The parties agree that they will not seek or argue in support of any other specific offense
24 characteristics, Chapter Three adjustments (other than the decrease for "Acceptance of Responsibility"),
25 or cross-references, except that the government may move for a departure or an adjustment based on the
26 defendant's post-plea obstruction of justice (§3C1.1).

27 The defendant may make any argument for departure from the Sentencing Guidelines and the
28 United States may oppose.

1 The defendant is free to recommend to the Court whatever sentence he believes is appropriate
2 under 18 U.S.C. § 3553(a). The government reserves the right to oppose any variance under 18 U.S.C.
3 § 3553(a).

4 **VII. WAIVERS**

5 **A. Waiver of Constitutional Rights.**

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

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

12 The defendant understands that the law gives the defendant a right to appeal his guilty plea,
13 conviction, and sentence. The defendant agrees as part of his plea, however, to give up the right to
14 appeal the guilty plea, conviction, and the sentence imposed in this case as long as the sentence does not
15 exceed the statutory maximum for the offense to which he is pleading guilty. The defendant specifically
16 gives up the right to appeal any order of restitution the Court may impose.

17 Notwithstanding the defendant's waiver of appeal, the defendant will retain the right to appeal if
18 one of the following circumstances occurs: (1) the sentence imposed by the District Court exceeds the
19 statutory maximum; and/or (2) the government appeals the sentence in the case. The defendant
20 understands that these circumstances occur infrequently and that in almost all cases this Agreement
21 constitutes a complete waiver of all appellate rights.

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

25 Notwithstanding the government's agreements in paragraph III.A above, if the defendant ever
26 attempts to vacate his plea, dismiss the underlying charges, or modify or set aside his sentence on any of
27 the counts to which he is pleading guilty, the government shall have the rights set forth in Section II.E
28 herein.

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

2 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
3 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
4 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
5 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
6 charges previously dismissed).

7 **VIII. ENTIRE PLEA AGREEMENT**

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

IX. APPROVALS AND SIGNATURES

A. Defense Counsel.

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

Dated:

12/12/17

HEATHER WILLIAMS
Federal Public Defender



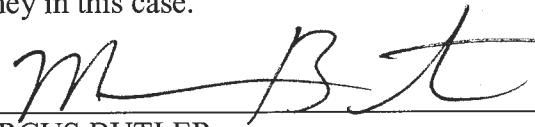
JEROME PRICE
Assistant Federal Defender
Attorney for Defendant

B. Defendant:

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

Dated:

12/12/17



MARCUS BUTLER
Defendant

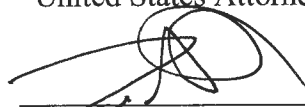
C. Attorney for United States:

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

Dated:

12/19/2017

PHILLIP A. TALBERT
United States Attorney



TODD A. PICKLES
Assistant United States Attorney

1 **EXHIBIT "A"**

2 Factual Basis for Plea

3 This case is the result of an investigation by the United States Secret Service. The investigation
4 revealed that beginning no later than February 2013, defendant Marcus Butler had been using, or
5 attempting to use, the his debit card ending in number 5371 issued and subsequently revoked by SAFE
6 Credit Union to purchase products from Apple Stores around the United States.

7 Records show that Butler, who resided in Sacramento, flew or traveled to other cities or areas of
8 the State of California and throughout the country, including flights to New York (twice), Chicago,
9 Connecticut, North Carolina, Baltimore, and Anchorage, Alaska, to visit Apple Stores. At the stores, he
10 would attempt to purchase various devices and products, typically amounting to around \$6000 per visit.
11 He would then provide the sales associate his SAFE debit card, which had been revoked. When the
12 sales transaction would be declined, Butler would tell the sales associate that there was an error with his
13 card and direct them to call a number he claimed was for SAFE. Other times, he made the call himself
14 and then gave his phone to the clerk. The person on the other end of the call, who was a co-conspirator
15 with Butler, would pretend to work for SAFE and provide a code that would permit the sale to be
16 completed. Thereafter, Butler would leave the Apple store with the merchandise obtained through the
17 fraudulent use of his revoked SAFE debit card.

18 Butler also used his revoked card to fraudulently obtain lodging and accommodation at hotels in
19 Sacramento.

20 In August 2013, Butler was arrested in Colorado after he attempted to purchase products at an
21 Apple Store using his revoked SAFE debit card. The revoked SAFE card was found on Butler, along
22 with an identification that Butler had used and presented at the hotels in Sacramento where he used his
23 revoked SAFE card to fraudulently obtain accommodations.

24 Overall, Butler caused a loss of at least \$350,000 using his revoked SAFE card.

25 As to Count Three alleged in the Indictment, on or about June 21, 2013, Butler used his revoked
26 SAFE debit card to obtain approximately \$6,730.84 of goods from an Apple Store in Modesto,
27 California. SAFE Credit Union engages in interstate and foreign commerce, as does the Apple
28 Corporation. The goods that Butler obtained were manufactured and shipped in foreign commerce.

29 I have reviewed the entire factual basis in Exhibit A above and, as far as my own conduct is
30 concerned, I adopt it as my own true statement.

31 DATED: 12/12/17

32 
33 MARCUS BUTLER, Defendant