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 9 UNITED STATES OF AMERICA

10
 11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 13 WESTERN DIVISION
 14

15	UNITED STATES OF AMERICA,	)	CR No. 08-1208-JFW
)	
16	Plaintiff,	)	<u>PLEA AGREEMENT FOR DEFENDANT</u>
		)	<u>NICHOLAS LAKES</u>
17	v.)	
)	
18	NICHOLAS LAKES,)	
	aka Dmitry Livshits,)	
19)	
	Defendant.)	
20)	

21 1. This constitutes the plea agreement between Nicholas
 22 Lakes, aka Dmitry Livshits ("defendant"), and the United States
 23 Attorney's Office for the Central District of California ("the
 24 USAO") in the above-captioned case. This agreement is limited to
 25 the USAO and cannot bind any other federal, state or local
 26 prosecuting, administrative or regulatory authorities.
 27

28 PLEA

2. Defendant gives up the right to indictment by a grand

1 jury and agrees to plead guilty to a six-count information in the
2 form attached to this agreement or a substantially similar form.

3 NATURE OF THE OFFENSES

4 3. In order for defendant to be guilty of counts one and
5 two of the first superseding information, which charge violations
6 of Title 18, United States Code, Section 1030(a)(4), the
7 following must be true:

8 First, the defendant knowingly accessed without
9 authorization or exceeded authorized access of a
10 computer that (a) was not exclusively for the use of
11 the United States government, but the defendant's
12 access affected the computer's use by or for the United
13 States government or (b) was used in interstate or
14 foreign commerce or communication;

15 Second, the defendant did so with the intent to
16 defraud;

17 Third, by accessing the computer without
18 authorization or exceeding authorized access to the
19 computer, the defendant furthered the intended fraud;
20 and

21 Fourth, the defendant by accessing the computer
22 without authorization or exceeding authorized access to
23 the computer obtained anything of value.

24 In order for defendant to be guilty of counts three through five
25 of the first superseding information, which charge violations of
26 Title 18, United States Code, Section 1341, the following must be
27 true:

28

1 First, the defendant made up a scheme or plan for
2 obtaining money or property by making false promises or
3 statements, and there was at least one particular false
4 promise or statement that was made;

5 Second, the defendant knew that the promises or
6 statements were false;

7 Third, the promises or statements were material,
8 that is they would reasonably influence a person to
9 part with money or property;

10 Fourth, the defendant acted with the intent to
11 defraud; and

12 Fifth, the defendant used, or caused to be used,
13 the mails to carry out or attempt to carry out an
14 essential part of the scheme.

15 A mailing is caused when one knows that the mails
16 will be used in the ordinary course of business or when
17 one can reasonably foresee such use. It does not matter
18 whether the material mailed was itself false or
19 deceptive so long as the mail was used as a part of the
20 scheme, nor does it matter whether the scheme or plan
21 was successful or that any money or property was
22 obtained.

23 In addition, defendant may be guilty of these crimes if he aided
24 and abetted their commission. In order for defendant to be
25 guilty of aiding and abetting a crime under Title 18, United
26 States Code, Section 2, the following must be true:

27 First, the crime was committed by someone;

28 Second, the defendant knowingly and intentionally

1 aided, counseled, commanded, induced or procured that
2 person to commit each element of the charged crime; and

3 Third, the defendant acted before the crime was
4 completed.

5 It is not enough that the defendant merely
6 associated with the person committing the crime, or
7 unknowingly or unintentionally did things that were
8 helpful to that person, or was present at the scene of
9 the crime.

10 The defendant must have acted with the knowledge
11 and intention of helping that person commit the charged
12 crime.

13 It is not necessary for the government to prove
14 precisely which defendant actually committed the crime
15 and which defendant aided and abetted.

16 Defendant admits that defendant is, in fact, guilty of these
17 offenses as described in counts one through five of the first
18 superseding information.

19 PENALTIES AND RESTITUTION

20 4. The statutory maximum sentence that the Court can
21 impose for each violation of Title 18, United States Code,
22 Section 1030(a)(4), is: five years imprisonment; a three-year
23 period of supervised release; a fine of \$250,000 or twice the
24 gross gain or gross loss resulting from the offense, whichever is
25 greatest; and a mandatory special assessment of \$100. The
26 statutory maximum sentence that the Court can impose for each
27 violation of Title 18, United States Code, Section 1341, is:
28 twenty years imprisonment; a three-year period of supervised

1 release; a fine of \$250,000 or twice the gross gain or gross loss
2 resulting from the offense, whichever is greatest; and a
3 mandatory special assessment of \$100.

4 5. Therefore, the total maximum sentence for all offenses
5 to which defendant is pleading guilty is: 70 years imprisonment;
6 a three-year period of supervised release; a fine of \$1.25
7 million or twice the gross gain or gross loss resulting from the
8 offenses, whichever is greatest; and a mandatory special
9 assessment of \$500.

10 6. The Court will also order forfeiture of the property
11 listed in count six pursuant to 18 U.S.C. § 981(a)(1)(C), 21
12 U.S.C. § 853(p), and 28 U.S.C. § 2461(c), or substitute assets up
13 to the value of that property.

14 7. Defendant understands that defendant will be required
15 to pay full restitution to the victims of the offenses.
16 Defendant agrees that, in return for the USAO's compliance with
17 its obligations under this agreement, the amount of restitution
18 is not restricted to the amounts alleged in the counts to which
19 defendant is pleading guilty and may include losses arising from
20 counts dismissed as well as all relevant conduct in connection
21 with those counts. The government informs defendant that the
22 applicable amount of restitution is \$3.5 million, but the parties
23 recognize and agree that this amount could change based on facts
24 that come to the attention of the parties prior to sentencing.
25 Defendant further agrees that defendant will not seek the
26 discharge of any restitution obligation, in whole or in part, in
27 any present or future bankruptcy proceeding.

28 8. Supervised release is a period of time following

1 imprisonment during which defendant will be subject to various
2 restrictions and requirements. Defendant understands that if
3 defendant violates one or more of the conditions of any
4 supervised release imposed, defendant may be returned to prison
5 for all or part of the term of supervised release, which could
6 result in defendant serving a total term of imprisonment greater
7 than the statutory maximum stated above.

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

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

20 FACTUAL BASIS

21 11. Defendant and the USAO agree and stipulate to the
22 statement of facts attached at the end of this plea agreement.
23 This statement of facts is sufficient to support pleas of guilty
24 to the charges described in this agreement and to establish the
25 sentencing guideline factors set forth in paragraph 15 below. It
26 is not meant to be a complete recitation of all facts relevant to
27 the underlying criminal conduct or all facts known to either
28 party that relate to that conduct.

WAIVER OF CONSTITUTIONAL RIGHTS

12. By pleading guilty, defendant gives up the following rights:

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

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

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

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

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

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

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

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

WAIVER OF DNA TESTING

1
2 13. Defendant has been advised that the government has in
3 its possession the following items of physical evidence that
4 could be subjected to DNA testing: Documents and files, cellular
5 telephones, checks, check stamps, and computers seized on
6 September 25, 2008, from 2211 Hyperion Avenue, Los Angeles,
7 California, and 720 Orange Grove Avenue, Apartment 7, Glendale,
8 California. Defendant understands that the government does not
9 intend to conduct DNA testing of any of these items for DNA
10 testing and does not intend to conduct any further DNA testing of
11 those items or any other items. Defendant understands that,
12 before entering guilty pleas pursuant to this agreement,
13 defendant could request DNA testing of evidence in this case.
14 Defendant further understands that, with respect to the offenses
15 to which defendant is pleading guilty pursuant to this agreement,
16 defendant would have the right to request DNA testing of evidence
17 after conviction under the conditions specified in 18 U.S.C. §
18 3600. Knowing and understanding defendant's right to request DNA
19 testing, defendant voluntarily gives up that right with respect
20 to both the specific items listed above and any other items of
21 evidence there may be in this case that might be amenable to DNA
22 testing. Defendant understands and acknowledges that by giving
23 up this right, defendant is giving up any ability to request DNA
24 testing of evidence in this case in the current proceeding, in
25 any proceeding after conviction under 18 U.S.C. § 3600, and in
26 any other proceeding of any type. Defendant further understands
27 and acknowledges that by giving up this right, defendant will
28 never have another opportunity to have the evidence in this case,

1 whether or not listed above, submitted for DNA testing, or to
2 employ the results of DNA testing to support a claim that
3 defendant is innocent of the offenses to which defendant is
4 pleading guilty.

5 SENTENCING FACTORS

6 14. Defendant understands that the Court is required to
7 consider the factors set forth in 18 U.S.C. § 3553(a)(1)-(7),
8 including the kinds of sentence and sentencing range established
9 under the United States Sentencing Guidelines ("U.S.S.G." or
10 "Sentencing Guidelines"), in determining defendant's sentence.
11 Defendant further understands that the Sentencing Guidelines are
12 advisory only, and that after considering the Sentencing
13 Guidelines and the other § 3553(a) factors, the Court may be free
14 to exercise its discretion to impose any reasonable sentence up
15 to the maximum set by statute for the crimes of conviction.

16 15. Defendant and the USAO agree and stipulate to the
17 following applicable Sentencing Guidelines factor:

18 Base Offense Level : 7 [U.S.S.G. § 2B1.1(a)(1)]

19 Defendant and the USAO reserve the right to argue that additional
20 specific offense characteristics (including but not limited to
21 loss and number of victims), adjustments, and departures under
22 the Sentencing Guidelines are appropriate.

23 16. There is no agreement as to defendant's criminal
24 history or criminal history category.

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

1 18. The stipulations in this agreement do not bind either
2 the United States Probation Office or the Court. Both defendant
3 and the USAO are free to: (a) supplement the facts by supplying
4 relevant information to the United States Probation Office and
5 the Court, (b) correct any and all factual misstatements relating
6 to the calculation of the sentence, and (c) argue on appeal and
7 collateral review that the Court's Sentencing Guidelines
8 calculations are not error, although each party agrees to
9 maintain its view that the calculations in paragraph 15 are
10 consistent with the facts of this case.

11 DEFENDANT'S OBLIGATIONS

12 19. Defendant agrees that he will:

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

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

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

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

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

26 f) Pay the applicable special assessments at or before
27 the time of sentencing unless defendant lacks the ability to pay
28 and submits a completed financial statement (form OBD-500) to the

1 USAO prior to sentencing.

2 20. Defendant further agrees:

3 a) To disclose to law enforcement officials, at a date
4 and time to be set by the USAO, the whereabouts of, defendant's
5 ownership interest in, and all other information known to
6 defendant about, all monies, properties, and/or assets of any
7 kind, derived from or acquired as a result of, or used to
8 facilitate the commission of, defendant's illegal activities, and
9 to forfeit all right, title, and interest in and to such items,
10 specifically including all right, title, and interest in and to
11 funds on deposit in TD Ameritrade account #785221551 in the
12 amount of \$1,140,000.00 ("the subject account funds"), which
13 defendant admits constitute the proceeds of defendant's illegal
14 activity in violation of 18 U.S.C. §§ 1030 and 1341.

15 b) To the Court's entry of an order of forfeiture at or
16 before sentencing with respect to these assets and to the
17 forfeiture of the assets.

18 c) To take whatever steps are necessary to pass to the
19 United States clear title to the assets described above,
20 including, without limitation, the execution of a consent decree
21 of forfeiture and the completing of any other legal documents
22 required for the transfer of title to the United States.

23 d) To request that TD Ameritrade issue a cashier's
24 check made payable to the U.S. Marshals Service for the amount of
25 \$1,140,000.00, the subject account funds. The TD Ameritrade
26 cashier's check representing the subject account funds shall be
27 delivered to the undersigned Assistant United States Attorney
28 within 60 days after the date defendant's plea is accepted by the

1 court.

2 e) Not to contest any administrative forfeiture
3 proceedings or civil judicial proceedings commenced against these
4 assets. With respect to any criminal forfeiture ordered as a
5 result of this plea agreement, defendant waives the requirements
6 of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding
7 notice of the forfeiture in the charging instrument,
8 announcements of the forfeiture sentencing, and incorporation of
9 the forfeiture in the judgment. Defendant acknowledges that
10 forfeiture of the assets is part of the sentence that may be
11 imposed in this case and waives any failure by the court to
12 advise defendant of this, pursuant to Rule 11(b)(1)(J), at the
13 time defendant's guilty plea is accepted.

14 f) Not to assist any other individual in any effort
15 falsely to contest the forfeiture of the assets described above.

16 g) Not to claim that reasonable cause to seize the
17 assets was lacking.

18 h) To prevent the disbursement of any and all assets
19 described above if such disbursements are within defendant's
20 direct or indirect control.

21 i) To fill out and deliver to the USAO a completed
22 financial statement listing defendant's assets on a form provided
23 by the United States Attorney's Office.

24 j) That forfeiture of assets described above shall not
25 be counted toward satisfaction of any special assessment, fine,
26 restitution, or any other penalty the Court may impose, unless
27 the Court determines it has the discretion to order otherwise and
28 does so order.

1 k) To waive all constitutional and statutory challenges
2 to forfeiture of the assets described above on any grounds,
3 including that the forfeiture constitutes an excessive fine or
4 punishment.

5 THE USAO'S OBLIGATIONS

6 21. If defendant complies fully with all defendant's
7 obligations under this agreement, the USAO agrees:

8 a) To abide by all sentencing stipulations contained in
9 this agreement.

10 b) At the time of sentencing to move to dismiss the
11 underlying indictment as against defendant. Defendant agrees,
12 however, that at the time of sentencing the Court may consider
13 the underlying indictment in determining the applicable
14 Sentencing Guidelines range, where the sentence should fall
15 within that range, the propriety and extent of any departure from
16 that range, and the determination of the sentence to be imposed
17 after consideration of the Sentencing Guidelines and all other
18 relevant factors under 18 U.S.C. § 3553(a).

19 c) At the time of sentencing, provided that defendant
20 demonstrates an acceptance of responsibility for the offenses up
21 to and including the time of sentencing, to recommend a two-level
22 reduction in the applicable sentencing guideline offense level,
23 pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary,
24 move for an additional one-level reduction if available under
25 that section.

26 d) To recommend that defendant be sentenced to a term
27 of imprisonment at the low end of the applicable Sentencing
28 Guidelines imprisonment range provided that the total offense

1 level as calculated by the Court is 28 or higher. For purposes
2 of this agreement, the low end of the Sentencing Guidelines
3 imprisonment range is that defined by the Sentencing Table in
4 U.S.S.G. Chapter 5, Part A.

5 BREACH OF AGREEMENT

6 22. If defendant, at any time after the execution of this
7 agreement, knowingly violates or fails to perform any of
8 defendant's agreements or obligations under this agreement ("a
9 breach"), the USAO may declare this agreement breached. If the
10 USAO declares this agreement breached at any time following its
11 execution, and the Court finds such a breach to have occurred,
12 then: (a) if defendant has previously entered guilty pleas,
13 defendant will not be able to withdraw the guilty pleas, and (b)
14 the USAO will be relieved of all of its obligations under this
15 agreement.

16 23. Following the Court's finding of a knowing and willful
17 breach of this agreement by defendant, should the USAO elect to
18 pursue any charge that was either dismissed or not filed as a
19 result of this agreement, then:

20 a) Defendant agrees that any applicable statute of
21 limitations is tolled between the date of defendant's signing of
22 this agreement and the commencement of any such prosecution or
23 action.

24 b) Defendant gives up all defenses based on the statute
25 of limitations, any claim of pre-indictment delay, or any speedy
26 trial claim with respect to any such prosecution, except to the
27 extent that such defenses existed as of the date of defendant's
28 signing this agreement.

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

12 LIMITED MUTUAL WAIVER OF APPEAL

13 24. Defendant gives up the right to appeal any sentence
14 imposed by the Court, including any order of restitution, and the
15 manner in which the sentence is determined, provided that (a) the
16 sentence is within the statutory maximum specified above and is
17 constitutional, and (b) the Court imposes a sentence within or
18 below the range corresponding to a total offense level of 24, and
19 the applicable criminal history category as determined by the
20 Court. Notwithstanding the foregoing, defendant retains any
21 ability defendant has to appeal the Court's determination of
22 defendant's criminal history category and the conditions of
23 supervised release imposed by the Court, with the exception of
24 the following: conditions set forth in General Orders 318, 01-05,
25 and/or 05-02 of this Court; the drug testing conditions mandated
26 by 18 U.S.C. §§ 3563(a)(5) and 3583(d); and the alcohol and drug
27 use conditions authorized by 18 U.S.C. § 3563(b)(7), and, subject
28 to the Court's power to modify for good cause shown, the

1 following conditions.

2 a. Defendant shall possess or use computers,
3 computer-related devices, screen/user names, passwords, email
4 accounts, and Internet Service Providers (ISPs) only within the
5 scope of his employment or as otherwise approved by the Probation
6 Office for personal use. After obtaining the Probation Office's
7 approval for possession or use of a particular computer,
8 computer-related device, screen/user name, password, e-mail
9 account, or ISP, defendant need not obtain approval for
10 subsequent use of that particular item;

11 b. Computer and computer-related devices include
12 personal computers, personal data assistants (PDAs), Internet
13 appliances, electronic games, cellular telephones, and computer
14 storage media, as well as peripheral equipment, that can access,
15 or can be modified to access, the Internet, electronic bulletin
16 boards, other computers, or similar media;

17 c. Upon commencing supervised release, defendant
18 shall disclose to the Probation Office any computers, computer-
19 related devices, screen/user names, passwords, email accounts,
20 and Internet Service Providers (ISPs) to which defendant is
21 provided access in connection with defendant's employment.
22 Defendant shall immediately report any changes in defendant's
23 employment affecting defendant's access and/or use of computers,
24 computer-related devices, screen/user names, passwords, email
25 accounts, and Internet Service Providers (ISPs);

26 d. All computers, computer-related devices, computer
27 storage media, and peripheral equipment used by defendant shall
28 be subject to search, seizure (including unannounced seizure for

1 the purpose of search), and the installation of search and/or
2 monitoring software and/or hardware. Nothing in this condition
3 shall be construed to preclude the Probation Office from
4 obtaining consent for search, seizure, and the installation of
5 search and/or monitoring software and/or hardware from
6 defendant's employer, or to grant defendant standing to object to
7 any search, seizure, or monitoring measures to which defendant's
8 employer consents. Defendant shall pay the cost of computer
9 monitoring in an amount not to exceed \$30 per month per device
10 connected to the Internet; and

11 e. Except for routine or automatic software
12 additions, deletions, upgrades, updates, installations, repairs,
13 or other modifications, defendant shall not add, remove, upgrade,
14 update, reinstall, repair, or otherwise modify the hardware or
15 software on any computers, computer-related devices, or
16 peripheral equipment approved for defendant's personal use
17 without the prior approval of the Probation Office. Nor shall
18 defendant hide or encrypt files or data. Further, defendant
19 shall, as requested by the Probation Office, provide all billing
20 records, including telephone, cable, Internet, satellite, and
21 similar records.

22 25. The USAO gives up its right to appeal the sentence,
23 provided that (a) the sentence is within the statutory maximum
24 specified above and is constitutional, and (b) the Court imposes
25 a sentence within or above the range corresponding to a total
26 offense level of 27, and the applicable criminal history category
27 as determined by the Court.

28

1 RESULT OF VACATUR, REVERSAL OR SET-ASIDE

2 26. Defendant agrees that if any count of conviction is
3 vacated, reversed, or set aside, the USAO may: (a) ask the Court
4 to resentence defendant on any remaining counts of conviction,
5 with both the USAO and defendant being released from any
6 stipulations regarding sentencing contained in this agreement,
7 (b) ask the Court to void the entire plea agreement and vacate
8 defendant's guilty pleas on any remaining counts of conviction,
9 with both the USAO and defendant being released from all of their
10 obligations under this agreement, or (c) leave defendant's
11 remaining convictions, sentence, and plea agreement intact.
12 Defendant agrees that the choice among these three options rests
13 in the exclusive discretion of the USAO.

14 COURT NOT A PARTY

15 27. The Court is not a party to this agreement and need not
16 accept any of the USAO's sentencing recommendations or the
17 parties' stipulations. Even if the Court ignores any sentencing
18 recommendation, finds facts or reaches conclusions different from
19 any stipulation, and/or imposes any sentence up to the maximum
20 established by statute, defendant cannot, for that reason,
21 withdraw defendant's guilty pleas, and defendant will remain
22 bound to fulfill all defendant's obligations under this
23 agreement. No one -- not the prosecutor, defendant's attorney,
24 or the Court -- can make a binding prediction or promise
25 regarding the sentence defendant will receive, except that it
26 will be within the statutory maximum.

27 NO ADDITIONAL AGREEMENTS

28 28. Except as set forth herein, there are no promises,

1 understandings or agreements between the USAO and defendant or
2 defendant's counsel. Nor may any additional agreement,
3 understanding or condition be entered into unless in a writing
4 signed by all parties or on the record in court.

5 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

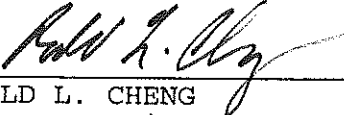
6 29. The parties agree and stipulate that this Agreement
7 will be considered part of the record of defendant's guilty plea
8 hearing as if the entire Agreement had been read into the record
9 of the proceeding.

10 This agreement is effective upon signature by defendant and
11 an Assistant United States Attorney.

12 AGREED AND ACCEPTED

13 UNITED STATES ATTORNEY'S OFFICE
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 THOMAS P. O'BRIEN
16 United States Attorney

17 
18 RONALD L. CHENG
19 Assistant United States Attorney

20 2/23/09
21 Date

22 I have read this agreement and carefully discussed every
23 part of it with my attorney. I understand the terms of this
24 agreement, and I voluntarily agree to those terms. My attorney
25 has advised me of my rights, of possible defenses, of the
26 sentencing factors set forth in 18 U.S.C. § 3553(a), of the
27 relevant Sentencing Guidelines provisions, and of the
28 consequences of entering into this agreement. No promises or
inducements have been given to me other than those contained in
this agreement. No one has threatened or forced me in any way to
enter into this agreement. Finally, I am satisfied with the

1 representation of my attorney in this matter.

2

3

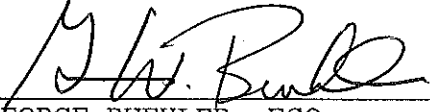
NICHOLAS LAKES
4 Defendant


Date 2/19/2009

5 I am Nicholas Lakes' attorney. I have carefully discussed
6 every part of this agreement with my client. Further, I have
7 fully advised my client of his rights, of possible defenses, of
8 the sentencing factors set forth in 18 U.S.C. § 3553(a), of the
9 relevant Sentencing Guidelines provisions, and of the
10 consequences of entering into this agreement. To my knowledge,
11 my client's decision to enter into this agreement is an informed
12 and voluntary one.

13

14


15 GEORGE BUEHLER, ESQ.
16 Counsel for Defendant
17 Nicholas Lakes

Date 2/19/2009

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1 FACTUAL BASIS

2 Defendants Nicholas Lakes, also known as Dimitry Livshits,
3 and Viacheslav Berkovich entered into and executed a scheme to
4 defraud trucking brokers and trucking companies through use of
5 the Internet. Using the names of fraudulent companies and false
6 individual identities, defendants Lakes and Berkovich accessed
7 the Safety and Fitness Electronic Records System ("SAFER")
8 Internet website of the Federal Motor Carrier Safety
9 Administration ("FMCSA") of the United States Department of
10 Transportation ("DOT"). The FMCSA provides the SAFER website to
11 the trucking industry to register brokerages and trucking
12 companies and operates the SAFER website on computers that are
13 used in interstate commerce. On June 6, 2005, defendants Lakes
14 and Berkovich, aiding and abetting one another, accessed the
15 SAFER website in excess of authorized access, in that they
16 accessed the website in the false name of "Justin Paltrow" to
17 register a fictitious brokerage named "Cargoland Brokerage, Inc."
18 On January 29, 2007, defendant Lakes and Berkovich, aiding and
19 abetting one another, accessed the SAFER website in excess of
20 authorized access, in that they accessed the website to obtain
21 unauthorized access to the registration page for Freight VIT,
22 which was an existing and legitimate company. On both occasions,
23 defendants Lakes and Berkovich accessed the SAFER website with
24 the intent to use each of these brokerages to bid to transport a
25 trucking load and collect payment from the original broker and
26 then to "double broker" those jobs to a legitimate trucking
27 company and not pay the trucking company for the work done.

28 On or about January 15, 2008, defendants Lakes and Berkovich

1 accessed the website of Internet Truckstop and obtained
2 information about a trucking load being brokered by Stevens
3 Transport, located in Dallas, Texas. Defendants Lakes and
4 Berkovich, in the name of Vega Trucking, agreed with Stevens
5 Transport to transport the load for \$3,400. Defendants Lakes and
6 Berkovich then used the name of Barkfelt Transport to double-
7 broker the load and agreed with RK Trucking for RK Trucking to
8 transport the load for \$4,000. On or about February 14, 2008,
9 defendants Lakes and Berkovich received in the United States mail
10 at 466 Foothill Blvd., # 268, La Canada, California 91011 (the
11 "La Canada Address"), a check from Stevens Transport for \$3,390,
12 which was deposited into Vega Trucking account no. xxxxx-67096 at
13 the Bank of America. Berkovich was the account holder for this
14 Bank of America account. The application for the mailbox at the
15 La Canada address was submitted by a "Michael Selten" with the
16 address 2211 Hyperion Avenue in Los Angeles, California.
17 Berkovich had submitted documentation to the mailbox business at
18 the La Canada Address as a person authorized to collect mail and
19 was a signatory on the Vega Trucking account. Defendants Lakes
20 and Berkovich never intended to pay RK Trucking for the load that
21 the carrier transported and in fact never paid RK Trucking for
22 the load.

23 On or about January 15, 2008, defendants Lakes and Berkovich
24 accessed the website of Internet Truckstop and obtained
25 information about a trucking load being brokered by RHO
26 Logistics, located in El Paso, Texas. Defendants Lakes and
27 Berkovich, in the name of Vega Trucking, agreed with RHO
28 Logistics to transport the load for \$3,500. Defendants Lakes and

1 Berkovich then used the name of Barkfelt Transport to double-
2 broker the load and agreed with Reno and Company for Reno and
3 Company to transport the load for \$4,300. On or about February
4 12, 2008, defendants Lakes and Berkovich received in the United
5 States mail at the La Canada Address a check from RHO Logistics
6 for \$3,325, which was deposited into Vega Trucking account no.
7 xxxx-3797 at East West Bank. Berkovich was the account holder
8 for the East West account and, on September 25, 2008, had blank
9 checks for the account in his residence at 2211 Hyperion Avenue
10 in Los Angeles, California. Defendants Lakes and Berkovich never
11 intended to pay Reno and Company for the load that the carrier
12 transported and in fact never paid Reno and Company for the load.

13 On or about May 21, 2008, defendants Lakes and Berkovich
14 accessed a loadboard website and obtained information about a
15 trucking load being brokered by Coyote Logistics, located in Lake
16 Forest, Illinois. Defendants Lakes and Berkovich, in the name of
17 Ligit Transportation, agreed with Coyote Logistics to transport
18 the load for \$2,100. Defendants Lakes and Berkovich then used
19 the name of Loadbook, Inc., to double-broker the load and agreed
20 with Charles Baker Trucking for Charles Baker Trucking to
21 transport the load for \$2,600. On or about July 9, 2008,
22 defendants Lakes and Berkovich received in the United States mail
23 at 5150 Broadway Street, # 303, San Antonio, Texas 78201, a check
24 from Coyote Logistics \$2,100, which was deposited into Legit
25 Transportation account no. xxxxx-77515 at Bank of America.
26 Berkovich was the account holder for this Bank of America
27 account. Defendants Lakes and Berkovich never intended to pay
28 Charles Baker Trucking for the load that the carrier transported

1 and in fact never paid Charles Baker Trucking for the load.

2 On September 25, 2008, agents of the DOT/Office of Inspector
3 General served federal search warrants at the residence of
4 defendant Berkovich at 2211 Hyperion Avenue in Los Angeles,
5 California, and the residence of defendant Lakes at 720 Orange
6 Grove Ave., Apartment 7, Glendale, California. In each
7 residence, agents found computers that were active and displayed
8 applications relating to trucking loads. Subsequently, agents
9 found on each computer documents relating to the Stevens/RK
10 Trucking, RHO Logistics/Reno and Company, and Coyote
11 Logistics/Charles Baker Trucking transactions described above.

12 The government contends that monies derived from the fraud
13 scheme total at least \$2.4 million. At least \$1,140,000 from
14 accounts pertaining to fraudulent brokerage companies were
15 ultimately placed into TD Ameritrade account #785221551, an
16 account controlled by defendant Lakes.

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CR No. 08-1208 (A) -JFW
)	
Plaintiff,	)	<u>F I R S T</u>
	)	<u>S U P E R S E D I N G</u>
v.	)	<u>I N F O R M A T I O N</u>
)	
NICHOLAS LAKES,	)	[18 U.S.C. § 1030(a)(4):
aka Dmitry Livshits, and	)	Computer Fraud; 18 U.S.C.
VIACHESLAV BERKOVICH,	)	§ 1341: Mail Fraud;
	)	18 U.S.C. § 2: Aiding and
Defendants.	)	Abetting and Causing an
	)	Act to be Done; 18 U.S.C.
	)	§ 981(a)(1)(C), 21 U.S.C.
	)	§ 853(p) and 28 U.S.C.
	)	§ 2461(c): Criminal
	)	Forfeiture]

The United States Attorney charges:

INTRODUCTORY ALLEGATIONS

At all times relevant to this Superseding Information:

ENTITIES AND INDIVIDUALS

DEFENDANT NICHOLAS LAKES

1. Defendant NICHOLAS LAKES, also known as ("aka") Dmitry Livshits (hereinafter "defendant LAKES") was an individual

1 residing in Glendale, California, within the Central District of
2 California.

3 2. Defendant LAKES possessed at least one computer at his
4 residence and accessed the Internet from a digital subscriber
5 line ("DSL") located there.

6 VIACHESLAV BERKOVICH

7 3. Defendant VIACHESLAV BERKOVICH (hereinafter
8 "BERKOVICH") was an individual residing in Los Angeles,
9 California, within the Central District of California.

10 4. Defendant Berkovich possessed at least one computer at
11 his residence and accessed the Internet from a DSL line located
12 there.

13 SAFERSYS

14 5. SAFER is the abbreviated name of the Safety and Fitness
15 Electronic Records System, which is accessible through
16 Safersys.org or safer.fmcsa.dot.gov, which are addresses for an
17 Internet website maintained by the Federal Motor Carrier Safety
18 Administration ("FMCSA") of the United States Department of
19 Transportation. The FMCSA requires brokers and motor carriers,
20 including trucking companies, to register on SAFER and provide
21 information that includes the business name, business address,
22 and business telephone number.

23 6. At the times relevant to this Superseding Information,
24 a user was required to provide a name and a valid credit card
25 number on the SAFER System website before the system would allow
26 the user to change registration information for a company that
27 was registered on the system.

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1 LOADBOARDS

2 7. "Loadboards" are Internet websites that advertise
3 available loads that are available for transport. Brokers
4 typically list loads available for carriers to transport, and
5 carriers make bids to carry those loads. "Loadboards" include
6 Internet Truckstop, DAT Connect.com and Getloaded.

7 COMPUTER TERMINOLOGY

8 Domain Name Server ("DNS")

9 8. A "domain name" identifies where on the Internet a
10 domain, or computer, is located. Domain names typically are
11 easy-to-recall words or phrases as opposed to numerical Internet
12 Protocol ("IP") addresses, which are used by computers to
13 identify addresses on the Internet. A "domain name server"
14 ("DNS") translates domain names to IP addresses and vice versa.
15 Domain name servers maintain central lists of domain names and
16 associated IP addresses. When computer users look for a
17 particular domain by inputting the appropriate domain name, the
18 computer seeks out a domain name server to translate or "map" the
19 domain name to the appropriate IP address. The request is then
20 relayed to other domain name servers on the Internet until the
21 appropriate IP address is found.

22 Internet Hosting Companies

23 9. Internet hosting companies provide individuals or
24 businesses with large scale access to the Internet through the
25 use of computers large enough to provide one or more services to
26 other computers on the Internet. These large computers are
27 commonly referred to as "servers." Use of a server often is
28 combined with access to a larger network of computers. The

1 services of Internet hosting companies enable customers to
2 conduct activity on the Internet, such as the ability to operate
3 web sites, administer networks, or run e-mail systems.

4 Internet Protocol Address

5 10. An "Internet Protocol Address" or "IP address" is a
6 unique numeric address used by computers on the Internet. An
7 IP address is designated by a series of four numbers, each in the
8 range 0-255, separated by periods (e.g., 121.56.97.178). Every
9 computer connected to the Internet must be assigned an IP address
10 so that Internet traffic sent from and directed to that computer
11 may be directed properly from its source to its destination.
12 Most Internet Service Providers ("ISPs") control a range of IP
13 addresses, which they assign to their subscribers. No two
14 computer networks on the Internet can have the same IP address at
15 the same time. Thus, at any given moment, an IP address is
16 unique to the computer network to which it has been assigned.

17 Internet Service Providers

18 11. ISPs offer their customers access to the Internet
19 using telephone or other telecommunications lines. ISPs provide
20 Internet e-mail accounts that allow users to communicate with
21 other Internet users by sending and receiving electronic messages
22 through their ISPs' servers. ISPs remotely store electronic
23 files on behalf of their customers and may provide other services
24 unique to each particular ISP.

25 Server

26 12. A "server" is a centralized computer that provides
27 services for other computers connected to it via a network. The
28 other computers attached to a server sometimes are called

1 "clients." In a large company, it is common for individual
2 employees to have client computers at their desktops. When the
3 employees access their e-mail, or access files stored on the
4 network itself, those files are pulled electronically from the
5 server, where they are stored, and are sent to the client's
6 computer via the network. In larger networks, it is common for
7 servers to be dedicated to a single task. For example, a server
8 that is configured so that its sole task is to support a World
9 Wide Web site is known simply as a "web server."

10 Uniform Resource Locator ("URL")

11 13. The "Uniform Resource Locator" or "URL" is the unique
12 address that identifies a computer or web page on the Internet
13 for routing purposes, such as <http://www.cnn.com>.

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1 | operate any trucking and transportation brokerage business and
2 | intended to defraud brokers of the transportation fee.

3 | b. Defendants LAKES, BERKOVICH, and their co-schemers
4 | used the Internet to access the SAFER System website and changed
5 | registration information for unrelated trucking and brokerage
6 | companies already registered in the SAFER System to create the
7 | impression that the unrelated companies were affiliated with
8 | defendants' companies. In doing so, defendants LAKES, BERKOVICH,
9 | and their co-schemers would enter on the SAFER System for the
10 | unrelated companies telephone numbers and e-mail addresses that
11 | in fact belonged to them and did not belong to the unrelated
12 | companies.

13 | c. Defendants LAKES, BERKOVICH, and their co-schemers
14 | accessed loadboards in the names of their companies and posed as
15 | carriers. After finding a load on a loadboard that was
16 | advertised by a broker, defendants LAKES, BERKOVICH, and their
17 | co-schemers then entered into a contract with the broker to
18 | transport the advertised load. Defendants LAKES, BERKOVICH, and
19 | their co-schemers never informed the broker that it was their
20 | intention to "double broker" the load to another carrier and
21 | collect the transportation fee, without paying any sum to the
22 | actual carrier.

23 | d. Defendants LAKES, BERKOVICH, and their co-schemers
24 | then posed as a broker, sometimes in the name of a different
25 | company, and accessed the same or different loadboard to
26 | advertise, or "double-broker" the same load to a carrier.
27 | Defendants LAKES, BERKOVICH, and their co-schemers never informed
28 |

1 the carrier that they had no intention of paying the negotiated
2 transportation fee to the carrier.

3 e. After the carrier with whom defendants and their
4 co-schemers contracted to transport the load completed the
5 trucking job, defendants LAKES, BERKOVICH, and their co-schemers
6 would collect the trucking fee from the original broker and
7 refuse to pay the carrier to whom they had "double-brokered" the
8 load.

9 17. To execute the above-described scheme, defendants
10 LAKES, BERKOVICH, and co-schemers known and unknown to the United
11 States Attorney knowingly participated in and aided and abetted
12 the following materially false and misleading acts, among others,
13 in the Central District of California and elsewhere:

14 Stevens Transport/RK Trucking

15 a. On or about January 15, 2008, defendants LAKES and
16 BERKOVICH accessed the Internet Truckstop website.

17 b. On or about January 15, 2008, defendants LAKES and
18 BERKOVICH, in the name of Vega Trucking, agreed with broker
19 Stevens Transport to transport a load for \$3,400.

20 c. On or about January 15, 2008, defendants LAKES and
21 BERKOVICH accessed the Internet Truckstop website and, in the
22 name of Barkfelt Transport, advertised the load they had agreed
23 to carry for Stevens Transport.

24 d. On or about January 15, 2008, defendants LAKES and
25 BERKOVICH agreed with carrier RK Trucking for RK Trucking to
26 transport the load for \$4,000.

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1 e. On or about February 14, 2008, defendants LAKES
2 and BERKOVICH received Bank of America check # 380165 from
3 Stevens Transport for \$3,390.

4 RHO Logistics/Reno and Company

5 f. On or about January 15, 2008, defendants LAKES and
6 BERKOVICH accessed the Internet Truckstop website.

7 g. On or about January 15, 2008, defendants LAKES and
8 BERKOVICH, in the name of Vega Trucking, agreed with broker RHO
9 Logistics to transport a load for \$3,500.

10 h. On or about January 16, 2008, defendants LAKES and
11 BERKOVICH accessed the Internet Truckstop website and, in the
12 name of Barkfelt Transport and advertised the load they had
13 agreed to carry for RHO Logistics.

14 i. On or about January 16, 2008, defendants LAKES and
15 BERKOVICH, in the name of Barkfelt Transport, agreed with carrier
16 Reno and Company for Reno and Company to transport the load for
17 \$4,300.

18 j. On or about February 12, 2008, defendants LAKES
19 and BERKOVICH received East West Bank check # 31097 from RHO
20 Logistics for \$3,325.

21 Coyote Logistics/Charles Baker Trucking

22 k. On or about May 21, 2008, defendants LAKES and
23 BERKOVICH accessed a loadboard website.

24 l. On or about May 21, 2008, defendants LAKES and
25 BERKOVICH, in the name of Ligit Transportation, agreed with
26 broker Coyote Logistics to transport a load for \$2,100.

27 m. On or about May 21, 2008, defendants LAKES and
28 BERKOVICH accessed the Getloaded website and, in the name of

1 | Loadbook, Inc., advertised the load they had agreed to carry for
2 | Coyote Logistics.

3 | n. On or about May 21, 2008, defendants LAKES and
4 | BERKOVICH, in the name of Loadbook, Inc., agreed with carrier
5 | Charles Baker Trucking for Charles Baker Trucking to transport
6 | the load for \$2,600.

7 | o. On or about July 9, 2008, defendants LAKES and
8 | BERKOVICH received Bank of America check # 25080 from Coyote
9 | Logistics for \$2,100.

10 | Activity on September 25, 2008

11 | p. On or about September 25, 2008, defendants LAKES
12 | and BERKOVICH were linked together by a computer connection
13 | between their residences. Defendants LAKES and BERKOVICH had
14 | each accessed an Internet loadboard website and were each
15 | operating a Transcore Freight software program used to track
16 | truckloads.

17 | ACCESSING OF A PROTECTED COMPUTER

18 | 18. On or about the following dates, in Los Angeles County,
19 | within the Central District of California, and elsewhere,
20 | defendants LAKES and BERKOVICH, and others known and unknown to
21 | the United States Attorney, aiding and abetting one another,
22 | knowingly and with the intent to defraud accessed without
23 | authorization and exceeded any authorized access to a protected
24 | computer, specifically, servers belonging to the FMCSA, to
25 | further an intended fraud and obtain things of value, that is, by
26 | accessing the SAFER System website and registering companies and
27 | changing information for previously-registered companies,
28 | accessing loadboards as one of those companies to enter into

1 transportation contracts with brokers to carry freight for a fee,
 2 and accessing loadboards to enter into a second set of
 3 transportation contracts with other trucking companies to carry
 4 those loads but which companies defendants did not intend to pay.

COUNT	DATE	UNAUTHORIZED ACCESS
ONE	6/6/05	Accessed SAFER System website in the name of "Justin Paltrow" to register Cargoland Brokerage, Inc.
TWO	1/29/07	Accessed SAFER System website in the name of "Justin Paltrow" to change registration information for Freight VIT

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1 the United States Postal Service according to the directions
2 thereon:

COUNT	DATE	ITEM MAILED
THREE	2/12/08	Mailing of check from RHO Logistics, in El Paso, Texas, to Vega Trucking, in La Canada, California.
FOUR	2/14/08	Mailing of check from Stevens Transport, in Dallas, Texas, to Vega Trucking, in La Canada, California.
FIVE	7/9/08	Mailing of check from Coyote Logistics, in Lake Forest, Illinois, to Ligit Transportation, in Los Angeles, California.

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COUNT SIX

[18 U.S.C. § 981(a)(1)(C), 21 U.S.C. § 853(p)
and 28 U.S.C. § 2461(c)]

23. The United States Attorney repeats and re-alleges all of the allegations set forth in paragraphs 1 through 22 of this Superseding Information.

24. Pursuant to Title 18, United States Code, Section 981(a)(1)(C), Title 21, United States Code, Section 853, and Title 28, United States Code, Section 2461(c), upon conviction for any of the offenses in Counts One through Five of this foregoing Superseding Information, defendant NICHOLAS LAKES shall forfeit to the United States:

a. any and all property, real or personal, which constitutes or is derived from proceeds traceable to such offense, including all funds on deposit in TD Ameritrade account #785221551; and

b. a sum of money equal to the total value of all property, real or personal, which constitutes or is derived from proceeds traceable to such offense.

25. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), defendant NICHOLAS LAKES, if so convicted, shall forfeit substitute property, up to the value of the money and property described in the preceding paragraph, if, by any act or omission of the defendant, the property described therein, or any portion thereof, (a) cannot be located upon the exercise of due diligence; (b) has been transferred or sold to, or deposited with, a third party; (c) has been placed beyond the jurisdiction

1 of the court; (d) has been substantially diminished in value; or
2 (e) has been commingled with other property that cannot be
3 divided without difficulty.
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5

6 THOMAS P. O'BRIEN
7 United States Attorney
8

9 CHRISTINE C. EWELL
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11 Chief, Criminal Division

12 WESLEY L. HSU
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