

1 the Information. The Court is under no obligation to accept any recommendations made by the
2 government, and the Court may in its discretion impose any sentence it deems appropriate up to and
3 including the statutory maximum stated in this plea agreement.

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

9 **C. Timeliness and Offer Revocation.**

10 The disposition contemplated by this Plea Agreement is conditioned upon: (i) the original plea
11 agreement being signed by the defendant and defense counsel and returned to counsel for the
12 Government no later than the close of business on April 17, 2015; (ii) the defendant entering a guilty
13 plea to the Information by approximately May 15, 2015; and (iii) the defendant not filing any
14 substantive motions, including those described in Rule 12 of the Federal Rule of Criminal Procedure.

15 Further, in the event that the defendant seeks any delay of the disposition of this case to which
16 the government objects, the government may, in its sole discretion, revoke the disposition offer
17 contained in this Plea Agreement and the government shall be relieved of its obligation to perform in
18 accordance with the terms of this Agreement.

19 **II. DEFENDANT'S OBLIGATIONS**

20 **A. Guilty Plea.**

21 The defendant will waive indictment and plead guilty to Counts One through Three, which
22 charge him with violations of Title 18, United States Code, Section 641 – Theft of Government
23 Property. The defendant agrees that he is in fact guilty of these charges and that the facts set forth in the
24 Factual Basis for Plea attached hereto as Exhibit A are accurate.

25 The defendant agrees that this Plea Agreement will be filed with the Court and become a part of
26 the record of the case. The defendant understands and agrees that he will not be allowed to withdraw his
27 plea(s) should the Court not follow the government's sentencing recommendations.

28 The defendant agrees that the statements made by him in signing this Agreement, including the

1 factual admissions set forth in the factual basis, shall be admissible and useable against the defendant by
2 the United States in any subsequent criminal or civil proceedings, even if the defendant fails to enter a
3 guilty plea pursuant to this Agreement. The defendant waives any rights under Fed. R. Crim. P. 11(f)
4 and Fed. R. Evid. 410, to the extent that these rules are inconsistent with this paragraph or with this
5 Agreement generally.

6 1. Waiver of Indictment:

7 The defendant acknowledges that under the United States Constitution he is entitled to be
8 indicted by a grand jury on the charges to which he is pleading guilty and that pursuant to Fed. R. Crim.
9 P. 7(b) he agrees to waive any and all rights he has to being prosecuted by way of Indictment to the
10 charges set forth in the Information. The defendant agrees that at a time set by the Court, he will sign a
11 written waiver of prosecution by Indictment and consent to proceed by Information rather than by
12 Indictment.

13 **B. Restitution.**

14 The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of
15 certain offenses. The Mandatory Victim Restitution Act requires the Court to order restitution to the
16 victims of certain offenses. The defendant agrees that the Court may order full restitution to any person
17 who would qualify as a victim under 18 U.S.C. §§ 3663 or 3663A. Further, the defendant agrees that
18 the victim in this case is the United States government and agrees to pay restitution in the amount of:
19 \$316,557.99, as ordered by the Court at sentencing. Payment shall be by cashier's or certified check
20 made payable to the Clerk of the Court. Defendant further agrees that he will not seek to discharge any
21 restitution obligation or any part of such obligation in any bankruptcy proceeding.

22 **C. Fine.**

23 The defendant agrees to pay a criminal fine as ordered by the Court. However, the government
24 does not recommend imposition of a fine.

25 **D. Special Assessment.**

26 The defendant agrees to pay a special assessment of \$300 at the time of sentencing (comprised of
27 \$100 per count of conviction), by delivering a check or money order payable to the United States
28 District Court to the United States Probation Office immediately before the sentencing hearing. The

1 defendant understands that this plea agreement is voidable at the option of the government if he fails to
2 pay the assessment prior to that hearing. If the defendant is unable to pay the special assessment at the
3 time of sentencing, he agrees to earn the money to pay the assessment, if necessary by participating in
4 the Inmate Financial Responsibility Program.

5 **E. Violation of Plea Agreement by Defendant/Withdrawal of Plea(s).**

6 If the defendant, cooperating or not, violates this plea agreement in any way, withdraws his plea,
7 or tries to withdraw his plea, this plea agreement is voidable at the option of the government. The
8 government will no longer be bound by its representations to the defendant concerning the limits on
9 criminal prosecution and sentencing as set forth herein. One way a cooperating defendant violates the
10 plea agreement is to commit any crime or provide any statement or testimony which proves to be
11 knowingly false, misleading, or materially incomplete. Any post-plea conduct by a defendant
12 constituting obstruction of justice will also be a violation of the agreement. The determination whether
13 the defendant has violated the plea agreement will be under a probable cause standard.

14 If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the
15 government shall have the right (1) to prosecute the defendant on any of the counts to which he pleaded
16 guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3) to file
17 any new charges that would otherwise be barred by this plea agreement. The defendant shall thereafter
18 be subject to prosecution for any federal criminal violation of which the government has knowledge,
19 including perjury, false statements, and obstruction of justice. The decision to pursue any or all of these
20 options is solely in the discretion of the United States Attorney's Office.

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

1 of the date of this plea agreement.

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

10 **F. Asset Disclosure.**

11 The defendant agrees to make a full and complete disclosure of his assets and financial
12 condition, and will complete the United States Attorney's Office's "Authorization to Release
13 Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change
14 of plea. The defendant also agrees to have the Court enter an order to that effect. The defendant
15 understands that this plea agreement is voidable at the option of the government if the defendant fails to
16 complete truthfully and provide the described documentation to the United States Attorney's office
17 within the allotted time.

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

19 **A. Recommendations.**

20 **1. Incarceration Range.**

21 The government will recommend that the defendant be sentenced to the low end of the
22 applicable guideline range as determined by the Court at sentencing.

23 **2. Acceptance of Responsibility.**

24 The government will recommend a two-level reduction (if the offense level is less than 16) or a
25 three-level reduction (if the offense level reaches 16) in the computation of his offense level if the
26 defendant clearly demonstrates acceptance of responsibility for his conduct as defined in U.S.S.G. §
27 3E1.1. This includes the defendant meeting with and assisting the probation officer in the preparation of
28 the pre-sentence report, being truthful and candid with the probation officer, and not otherwise engaging

1 in conduct that constitutes obstruction of justice within the meaning of U.S.S.G § 3C1.1, either in the
2 preparation of the pre-sentence report or during the sentencing proceeding.

3 **B. Use of Information for Sentencing.**

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

9 Further, other than as set forth above, the government agrees that any incriminating information
10 provided by the defendant during his cooperation will not be used in determining the applicable
11 guideline range, pursuant to U.S.S.G. § 1B1.8., unless the information is used to respond to
12 representations made to the Court by the defendant, or on his behalf, that contradict information
13 provided by the defendant during his cooperation.

14 **IV. ELEMENTS OF THE OFFENSE**

15 At a trial, the government would have to prove beyond a reasonable doubt the following
16 elements of the offense(s) to which the defendant is pleading guilty, namely, violations of Title 18,
17 United States Code, Section 641 – Theft of Government Property (Counts One through Three):

- 18 1. Defendant knowingly stole, embezzled, or converted to his use a thing of value with the
19 intention of depriving the owner of the use or benefit of that thing of value;
20 2. The thing of value belonged to the United States or department or agency thereof, and
21 3. The thing of value was worth more than \$1,000.

22 The defendant fully understands the nature and elements of the crimes charged in the
23 information to which he is pleading guilty, together with the possible defenses thereto, and has
24 discussed them with his attorney.

25 **V. MAXIMUM SENTENCE**

26 **A. Maximum Penalty.**

27 The maximum sentence that the Court can impose on each count of conviction is 10 years of
28 incarceration, a fine of \$250,000, a three-year period of supervised release and a special assessment of

1 \$100. By signing this Plea Agreement, the defendant also agrees that the Court can order the payment
2 of restitution for the full loss caused by the defendant's wrongful conduct, as stipulated in this
3 Agreement. The defendant agrees that the restitution order is not restricted to the amounts alleged in the
4 specific Counts to which he is pleading guilty. The defendant further agrees, as noted above, that he
5 will not attempt to discharge in any present or future bankruptcy proceeding any restitution imposed by
6 the Court.

7 **B. Violations of Supervised Release.**

8 The defendant understands that if he violates a condition of supervised release at any time during
9 the term of supervised release, the Court may revoke the term of supervised release and require the
10 defendant to serve up to 2 additional years imprisonment.

11 **VI. SENTENCING DETERMINATION**

12 **A. Statutory Authority.**

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

23 **B. Estimated Guideline Calculation.**

24 The government and the defendant agree that there is no material dispute as to the following
25 sentencing guidelines variables and therefore stipulate to the following guideline calculation concerning
26 each Count in the Information:

27 //

28 //

VIII. ENTIRE PLEA AGREEMENT


Other than this plea agreement, no agreement, understanding, promise, or condition between the government and the defendant exists, nor will such agreement, understanding, promise, or condition exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and 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: 4/6/2015

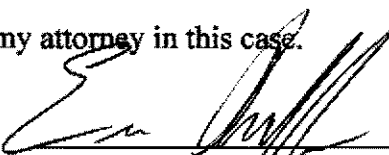


NOA OREN, ESQ.
Attorney for Defendant

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: 4/1/2015

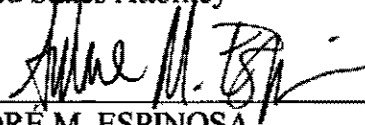


ERIC SHAFFER
Defendant

C. Attorney for United States:

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

Dated: 6/30/2015

BENJAMIN B. WAGNER
United States Attorney


ANDRÉ M. ESPINOSA
Assistant United States Attorney

EXHIBIT "A"

Factual Basis for Plea(s)

Background

1
2
3
4 Between in or about February 2011 through on or about March 26, 2015, Eric M. Shaffer
5 ("Shaffer") was an employee of the Department of Defense ("DoD"), Defense Logistics Agency
6 ("DLA"), San Joaquin Distribution Center, in Tracy, California (the "Tracy DLA Depot"), in the Eastern
7 District of California. As part of his employment at the Tracy DLA Depot, Shaffer was assigned to
8 Warehouse 30, where Shaffer regularly came into contact with new goods delivered by vendors to the
9 DoD and the United States General Service Administration ("GSA") through the GSA Advantage
10 Program and similar programs, which were stored at the Tracy DLA Depot until being shipped to DoD
11 end-users stationed at bases in the Pacific Ocean region and elsewhere.¹ Between in or about February
12 2011 through on or about March 26, 2015, Shaffer took without authorization of, or permission from,
13 the DLA, property purchased by DoD agencies and sold that property to others, by various means
14 including through an account he maintained on eBay, the online auction website, resulting in the
15 permanent deprivation of such property from the DoD and personal financial gain to Shaffer. The DoD
16 and GSA are agencies of the United States government.
17
18

19 To accomplish his theft and resale scheme, Shaffer stole items from the Tracy DLA Depot and
20 offered those items for sale using an eBay account Shaffer operated with the username "mousecat1995."
21 Between February 27, 2011, and January 3, 2015, Shaffer used the mousecat1995 eBay account to
22 initiate approximately 346 auctions on eBay, of which approximately 325 involved items that Shaffer
23 stole from the Tracy DLA Depot. Many of those 325 auctions involved multiple quantities of the item
24 listed for sale, resulting in a total of approximately 622 items stolen by Shaffer and sold on eBay. In
25
26

27 ¹ The GSA Advantage and GSA Global Supply services are both operated by the GSA and are
28 designed to provide a streamlined, efficient purchasing portal for federal agencies to acquire the goods
and services from GSA-approved sources at GSA-negotiated prices.

1 addition to the eBay sales, Shaffer also accepted approximately forty-two payments totaling \$62,712, for
2 the sale of items Shaffer stole from the Tracy DLA Depot and sold directly to customers who paid
3 Shaffer via PayPal, an online payment system. Shaffer sold the stolen government property at deep
4 discounts from their purchase prices. Nevertheless, Shaffer's scheme generated approximately \$238,000
5 in illicit revenue, which Shaffer used to enhance his lifestyle beyond his legitimate means.
6

7 **Specific Factual Basis Concerning Count One**

8 On or about May 20, 2014, Shaffer sold to a third party a GE Video Boroscope kit (the "GE
9 Boroscope") through his eBay account for \$5,500. Law enforcement agents identified the GE Boroscope
10 Shaffer sold by serial number, and determined that the GE Boroscope had been purchased by the US Air
11 Force through the GSA Advantage Program and was delivered to the Tracy DLA Depot, Warehouse 30,
12 on or about April 17, 2014. The purchase contract for the sale of the GE Boroscope revealed that it cost
13 the US Air Force \$10,674. Law enforcement agents confirmed with US Air Force officials that one of
14 the five GE Boroscopes purchased under the particular contract and delivered to the Tracy DLA Depot
15 on or about April 17, 2014, was never received by the Air Force. In an interview with law enforcement
16 agents on February 26, 2015, Shaffer admitted that he stole the GE Boroscope from the Tracy DLA
17 Depot and sold it on eBay.
18

19 **Specific Factual Basis Concerning Count Two**

20 On or about September 27, 2014, Shaffer listed three Cisco CTS-CTRL-DVC8 TelePresence 8-
21 inch LCD Touch Panels (the "Cisco Touch Panels") for sale on eBay. Law enforcement agents
22 identified the devices by serial numbers and determined that they had been ordered by the US Army
23 through the GSA Advantage Program and delivered to the Tracy DLA Depot, Warehouse 30, on or
24 about September 26, 2014. A copy of the purchase contract revealed that the Cisco Touch Panels cost
25 the US Army \$1,563.93 each.
26
27
28

1 On or about October 1, 2014, an undercover law enforcement agent (“UC”) used an eBay
2 account to purchase the three Cisco Touch Panels from Shaffer for \$250 each. The UC paid for the
3 items using PayPal and requested that the items be shipped to an address maintained by law enforcement
4 agents. On or about October 6, 2014, three separate packages were delivered to the address the UC had
5 provided Shaffer. Each of the packages contained a Cisco Touch Panel Shaffer had offered for sale on
6 eBay and bearing one of the serial numbers of devices that had been ordered by the US Army through
7 the GSA Advantage Program and delivered to the Tracy DLA Depot, Warehouse 30, on or about
8 September 26, 2014. In an interview with law enforcement agents on February 26, 2015, Shaffer
9 admitted that he stole the three Cisco Touch Panels from the Tracy DLA Depot and sold them on eBay.
10

11 **Specific Factual Basis Concerning Count Three**

12 On or about September 19, 2014, the US Air Force ordered sixteen Cisco WS-C3560C-8PC-S
13 Ethernet switches (the “Cisco Ethernet Switches”) through the GSA Advantage Program with
14 instructions that the order be shipped to the Tracy DLA Depot to be forwarded to the US Air Force
15 customer. Law enforcement agents confirmed that the retailer shipped the Cisco Ethernet Switches to
16 the Tracy DLA Depot, Warehouse 30, and that the devices arrived at the Tracy DLA Depot on or
17 about September 25, 2014. Law enforcement agents also identified the sixteen Cisco Ethernet
18 Switches by serial numbers and confirmed that they sold for \$686.25 each, for a total of \$10,980.
19

20 On or about September 18, 2014, the US Army placed an order through the GSA Advantage
21 program to purchase a Panasonic AJ-PCD35 5-Bay P2 Memory Card Drive (the “Panasonic Memory
22 Card”), with instructions that it be shipped to the Tracy DLA Depot, Warehouse 30, to be forwarded
23 to the US Army customer. Law enforcement agents reviewed the purchase order and confirmed the
24 serial number of the Panasonic Memory Card and the retail price of \$2,303.64. Law enforcement
25 agents also confirmed that the Panasonic Memory Card was delivered to the Tracy DLA Depot on or
26
27
28

1 about October 2, 2014. On or about October 4, 2014, Shaffer listed a Panasonic Memory Card for
2 sale on his on eBay account.

3 On or about October 23, 2014, Shaffer sent an email to the UC referenced above (to an email
4 address associated with the UC's PayPal account) and offered four new Cisco Ethernet Switches for
5 sale. On October 24, 2014, the UC responded to Shaffer by email and agreed to purchase the Cisco
6 Ethernet Switches for \$250 each and the Panasonic Memory Card then-listed on eBay, which Shaffer
7 later agreed to sell to the UC for \$600. The total sale price for all five items was \$1,600. Between
8 October 27 and 28, 2014, Shaffer and the UC arranged to cut out eBay from the sales transaction and
9 for the UC to purchase the items directly from Shaffer. Shaffer claimed he was unable to personally
10 deliver the items and arranged for an individual with the initials A.J.M., to meet the UC at a coffee
11 shop in Ceres, California, and deliver the four Cisco Ethernet Switches and the Panasonic Memory
12 Card in exchange for \$1,600.
13

14
15 On or about October 27, 2014, law enforcement agents conducted surveillance of Shaffer's
16 residence. At approximately 8:25am, agents observed a man, later identified as A.J.M., park a grey
17 Chevrolet pickup truck in front of Shaffer's residence and enter the residence. Shortly thereafter,
18 A.J.M. exited Shaffer's residence carrying several boxes, which A.J.M. placed in the back of his
19 pickup truck. The UC called A.J.M. by telephone using contact information Shaffer had provided
20 and described the UC's location at the coffee shop. When A.J.M. arrived at the coffee shop, he
21 delivered the boxes he had retrieved from Shaffer's residence to the UC. A.J.M. accepted \$1,600 in
22 \$100 bills from the UC, counted the money, and placed a \$100 bill into his jacket pocket before
23 helping the UC carry the boxes to the UC's vehicle and leaving. A.J.M. returned to Shaffer's
24 residence, where he entered the residence for a short time before he exited and drove away.
25

26 On or about October 30, 2014, law enforcement agents confirmed that the serial number of the
27 Panasonic Memory Card delivered by A.J.M. matched the serial number of the Panasonic Memory
28

1 Card previously delivered to the Tracy DLA Depot on or about October 2, 2014, and that the serial
2 numbers of the four Cisco Ethernet Switches delivered by A.J.M. matched the serial numbers of four
3 of the sixteen Cisco Ethernet Switches delivered to the Tracy DLA Depot on or about September 25,
4 2014. In an interview with law enforcement agents on February 26, 2015, Shaffer admitted that he
5 stole the Panasonic Memory Card and the four Cisco Ethernet Switches from the Tracy DLA Depot
6 and sold them to the UC.
7

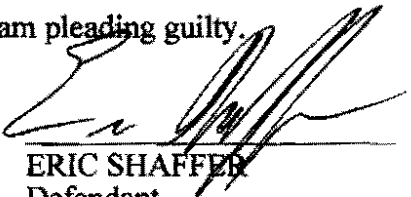
8 **Conclusion**

9 In an interview with law enforcement agents on or about February 26, 2015, Shaffer reviewed
10 a spreadsheet of all the items he sold in eBay between February 27, 2011, and January 3, 2015, and
11 agreed that, with the exception of certain personal property, nearly all of those sales were of goods
12 Shaffer stole from the Tracy DLA Depot. Shaffer agrees that, with respect to each item he took from
13 the Tracy DLA Depot, including the items charged in Counts One through Three of the Information
14 and described herein: (i) Shaffer took each item without authorization; (ii) Shaffer knew he was not
15 authorized to sell the goods for personal gain but did so anyway; and (iii) each time Shaffer took and
16 sold goods he intended to permanently deprive the DoD end-purchaser of the use or benefit of those
17 goods. Shaffer agrees that the fair market replacement value of the goods he took without
18 authorization from the Tracy DLA Depot and sold for his personal gain, is at least approximately
19 \$316,557.99.
20

21
22 I have read and carefully reviewed the Factual Basis for Plea with my attorneys. I agree that as it
23 concerns my conduct it is correct. I also agree that if this matter proceeded to trial, the United States
24 could establish each of the facts contained within the Factual Basis for Plea beyond a reasonable doubt,
25 and that those facts satisfy the elements of the offense to which I am pleading guilty.

26 Dated:

4/1/15

27 
ERIC SHAFFER
Defendant