United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN FRANCISCO

FILED

Dec 22 2021

Mark B. Busby
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

UNITED STATES OF AMERICA,

V.

JOSEPH SULLIVAN,

DEFENDANT(S).

SUPERSEDING INDICTMENT

18 U.S.C. § 1505 – Obstructing Proceedings of the Federal Trade Commission
(Count One);
18 U.S.C. § 4 – Misprision of a Felony (Count Two);
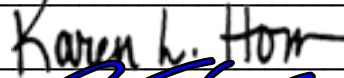18 U.S.C. § 1343 – Wire Fraud (Counts Three to Five)

A true bill.

/s/ Foreperson of the Grand Jury

Foreman

Filed in open court this 22nd ___ day of

December 2021 ___.

Karen L. Hom

Joseph C. Spero, Chief Magistrate Judge

Clerk

Bail, $ No Process

1 STEPHANIE M. HINDS (CABN 154284)
   Acting United States Attorney

2

3

4

5

6

7

8   UNITED STATES DISTRICT COURT

9   NORTHERN DISTRICT OF CALIFORNIA

10   SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,   ) CASE NO. 3:20-cr-00337 WHO
)
12   Plaintiff,   ) VIOLATIONS:
) 18 U.S.C. § 1505 – Obstructing Proceedings of the
13   v.   ) Federal Trade Commission;
) 18 U.S.C. § 4 – Misprision of a Felony;
14 JOSEPH SULLIVAN,   ) 18 U.S.C. § 1343 – Wire Fraud
)
15   Defendant.   ) SAN FRANCISCO VENUE
)

16

17   S U P E R S E D I N G   I N D I C T M E N T

18 The Grand Jury charges:

19   Introductory Allegations

20   At all times relevant to this Indictment:

21   1.   The United States Federal Trade Commission ("FTC") was an independent agency of the

22 United States. The FTC's Division of Privacy and Identity Protection oversaw and investigated, among

23 other things, issues related to consumer privacy, identity theft, and information security.

24   2.   In or about February 2015, Uber Technologies, Inc. ("Uber") informed the FTC that it

25 had learned of a data breach it had suffered in September 2014 (hereinafter the "2014 Data Breach"). In

26 or about March 2015, the FTC informed Uber that the FTC was evaluating Uber's data security program

27 and practices. On or about May 21, 2015, the FTC issued a Civil Investigative Demand to Uber, which

28 contained a series of interrogatories and document requests. Over the subsequent months, and

SUPERSEDING INDICTMENT

1 continuing into 2017, Uber provided responses to the FTC's formal and informal requests for

2 information related to the FTC's investigation.

3   3.   In or about June 2016, the FTC issued another Civil Investigative Demand to Uber,

4 which included a requirement that Uber designate one or more officers, directors, or managing agents to

5 testify on behalf of the company on a variety of topics. Uber designated SULLIVAN as its witness, and

6 SULLIVAN provided sworn testimony on or about November 4, 2016.

7   4.   On or about November 14 and 15, 2016, approximately ten days after his testimony,

8 SULLIVAN learned that hackers had gained unauthorized access to Uber data containing personally

9 identifiable information related to Uber's users and drivers, including approximately 600,000 driver's

10 license numbers associated with certain Uber drivers (hereinafter the "2016 Data Breach"). In other

11 words, Uber had suffered another data breach. The breach was committed by a group including

12 HACKER A and HACKER B.

13   5.   Thereafter, SULLIVAN engaged in a scheme designed to ensure that the data breach did

14 not become public knowledge, was concealed, and was not disclosed to the FTC and to impacted users

15 and drivers. SULLIVAN arranged for the hackers to be paid a substantial sum of money in exchange

16 for, among other things, their written agreement not to disclose the data breach. Moreover, the written

17 agreement misrepresented the circumstances of the data breach. SULLIVAN also withheld information

18 regarding the breach from others at Uber who were in a position to disclose the breach to the FTC and

19 would have been aware of the relevance of the 2016 Data Breach to the FTC's investigation. Months

20 later, when Uber hired a new CEO, SULLIVAN misrepresented the circumstances of the data breach to

21 the CEO. At the time of that misrepresentation, the FTC investigation was not yet fully resolved, and

22 the FTC remained unaware of the 2016 Data Breach.

23   THE SCHEME AND ARTIFICE TO DEFRAUD

24   6.   Beginning on or about November 14, 2016, and continuing through in or about

25 November 2017, SULLIVAN knowingly and with the intent to defraud participated in, devised, and

26 intended to devise a scheme and artifice to defraud as to a material matter, and to obtain money and

27 property by means of materially false and fraudulent pretenses, representations, and promises, by

28 making materially false and misleading statements, and failing to disclose material facts with a duty to

SUPERSEDING INDICTMENT   2

1   disclose.

2   7.   According to the contracts governing Uber's relationship with its California drivers at the

3   relevant time, Uber was a provider of a ride-sharing platform. Individuals who offered rides within that

4   platform (hereinafter "drivers") were not characterized by Uber as "employees" under these contracts,

5   and they were not promised a traditional wage. Instead, the drivers agreed to pay a "Service Fee" to

6   Uber in exchange for the right to use that platform. Uber's role was to act as the drivers' agent in

7   collecting fares from the users of Uber's platform (hereinafter "riders") via Uber's payment processing

8   platform. The Service Fee paid by drivers to Uber was in exchange for the use of the driver application

9   and certain other services.

10   8.   SULLIVAN was aware that California state law at the time contained certain provisions

11   obligating businesses in California to notify affected California residents of data breaches under certain

12   circumstances. In fact, SULLIVAN had been aware of, and had participated in, Uber's efforts to notify

13   certain individuals of the 2014 Data Breach. This California state law provides that a business operating

14   in California that "owns or licenses computerized data that includes personal information" shall disclose

15   a breach to a resident of California "whose unencrypted personal information was, or is reasonably

16   believed to have been, acquired by an unauthorized person." Cal. Civil Code § 1798.82(a). "Personal

17   information" is defined to include a driver's license number in combination with an individual's first

18   name or first initial and last name. *Id.* § 1798.82(h)(1).

19   9.   In the wake of the 2016 Data Breach, SULLIVAN took measures to ensure that drivers

20   did not receive the notification required by state law. This omission deprived those drivers of material

21   information relevant to a driver's decision to continue driving for Uber and paying the associated

22   Service Fee to Uber.

23   10.   SULLIVAN also made, caused to made, and ratified material misrepresentations of fact

24   to ensure that Uber's drivers and others did not learn the true nature of the breach. First, SULLIVAN

25   caused to be drafted and executed a Non-Disclosure Agreement between Uber and the hackers

26   responsible for the 2016 Data Breach. This Non-Disclosure Agreement falsely stated that the hackers

27   had neither taken nor stored Uber's data in the course of the 2016 Data Breach. All signatories to the

28   Non-Disclosure Agreement, in addition to SULLIVAN, knew this statement was false. The

SUPERSEDING INDICTMENT   3

1   misstatement falsely suggested that the 2016 Data Breach was not, in fact, a data breach, and that

2   notification under California law thus would not be required. This fraudulent Non-Disclosure

3   Agreement created a misleading documentary record that would justify the failure to disclose the breach

4   to Uber's drivers. Second, SULLIVAN subsequently misrepresented the nature of the data breach to

5   Uber's new CEO. In response to an inquiry, SULLIVAN sent an email on September 20, 2017 to

6   Uber's CEO falsely stating that the hackers' bounty had only been paid after the hackers had been

7   identified. SULLIVAN also misrepresented the scope of the breach, suggesting both that the hackers

8   had merely accessed folders containing Uber's data, as opposed to taking and storing that data, and

9   suggesting that the event was not, in fact, a data breach. Third, in response to a related inquiry,

10 SULLIVAN falsely suggested in an email on September 25, 2017, that the 2016 Data Breach was not, in

11 fact, a data breach, and falsely claimed that the incident was no different factually from many other

12 security incidents. In reality, the 2016 Data Breach was the most severe data security incident in

13 SULLIVAN's tenure and implicated approximately 57 million user and driver records.

14 COUNT ONE: (18 U.S.C. § 1505 – Obstruction of Proceedings before the Federal Trade
                        Commission)
15

16   11.   Paragraphs 1 through 10 are realleged as if set forth fully here.

17   12.   Beginning on or about November 14, 2016, and continuing through in or about

18 November 2017, in the Northern District of California and elsewhere, the defendant,

19   JOSEPH SULLIVAN,

20 did corruptly influence, obstruct, and impede, and endeavored to influence, obstruct, and impede, and

21 any applicable combination, the due and proper administration of the law under which a pending

22 proceeding was being had before a department or agency of the United States, namely, the FTC and its

23 investigation into Uber's data security program and practices, all in violation of Title 18, United States

24 Code, Section 1505.

25 COUNT TWO: (18 U.S.C. § 4 – Misprision of a Felony)

26   13.   Paragraphs 1 through 12 are realleged as if set forth fully here.

27   14.   Beginning on or about November 14, 2016, and continuing through in or about

28 November 2017, in the Northern District of California and elsewhere, the defendant,

SUPERSEDING INDICTMENT   4

JOSEPH SULLIVAN,

having knowledge of the actual commission of a felony cognizable by a court of the United States, to

wit, intentionally accessing a computer without authorization or exceeding authorized access, and

thereby obtaining information from a protected computer, in violation of 18 U.S.C. § 1030(a)(2)(C), and

conspiracy to commit extortion involving computers in violation of 18 U.S.C. §§ 1030(a)(7)(B), (b), and

(c)(3)(A), did conceal the same, and did not as soon as possible make known the same to some judge or

other person in civil or military authority under the United States, all in violation of Title 18, United

States Code, Section 4.

COUNTS THREE THROUGH FIVE: (18 U.S.C. § 1343 – Wire Fraud)

      15.   Paragraphs 1 through 14 are all realleged as if set forth fully here.

      16.   On or about the dates set forth below, within the Northern District of California, and

elsewhere, the defendant,

JOSEPH SULLIVAN

for the purpose of executing the material scheme and artifice to defraud investors, and for obtaining

money and property from investors by means of materially false and fraudulent pretenses,

representations, promises, and material omissions with a duty to disclose, did knowingly transmit and

cause to be transmitted by means of wire communication in interstate commerce certain writings, signs,

signals, and pictures, that is, electronic mail messages between an Uber employee and the two hackers

responsible for the 2016 Data Breach, as further set forth below:

COUNT	DATE	DESCRIPTION
3	January 2, 2017	Interstate email from UBER EMPLOYEE to HACKER A regarding Non-Disclosure agreement
4	January 2, 2017	International email from HACKER B to UBER EMPLOYEE regarding Non-Disclosure Agreement
5	January 3, 2017	International email from HACKER B to UBER EMPLOYEE regarding execution of Non-Disclosure Agreement in his true name.

SUPERSEDING INDICTMENT   5

1   Each in violation of Title 18, United States Code, Section 1343.

2

3   DATED: December 22, 2021   A TRUE BILL.

4

5   /s/ Foreperson
                                                  FOREPERSON
6

7   STEPHANIE M. HINDS
    Acting United States Attorney
8

9   /s/ Andrew Dawson

10 ANDREW F. DAWSON
    Assistant United States Attorneys
11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

SUPERSEDING INDICTMENT   6