

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)

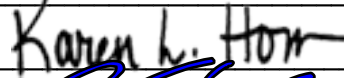
A true bill.

/s/ Foreperson of the Grand Jury

Foreman

Filed in open court this 22nd day of

December 2021.



Clerk

Joseph E. Spero, Chief Magistrate Judge

Bail, \$ No Process

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

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Mark B. Busby
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NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

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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,)
13 v.) VIOLATIONS:
14 JOSEPH SULLIVAN,) 18 U.S.C. § 1505 – Obstructing Proceedings of the
15 Defendant.) Federal Trade Commission;
16) 18 U.S.C. § 4 – Misprision of a Felony;
17) 18 U.S.C. § 1343 – Wire Fraud
18) SAN FRANCISCO VENUE

19 SUPERSEDING INDICTMENT

20 The Grand Jury charges:

21 Introductory Allegations

22 At all times relevant to this Indictment:

23 1. The United States Federal Trade Commission (“FTC”) was an independent agency of the
24 United States. The FTC’s Division of Privacy and Identity Protection oversaw and investigated, among
25 other things, issues related to consumer privacy, identity theft, and information security.

26 2. In or about February 2015, Uber Technologies, Inc. (“Uber”) informed the FTC that it
27 had learned of a data breach it had suffered in September 2014 (hereinafter the “2014 Data Breach”). In
28 or about March 2015, the FTC informed Uber that the FTC was evaluating Uber’s data security program
and practices. On or about May 21, 2015, the FTC issued a Civil Investigative Demand to Uber, which
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

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

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
15 Commission)

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,

1 JOSEPH SULLIVAN,

2 having knowledge of the actual commission of a felony cognizable by a court of the United States, to
 3 wit, intentionally accessing a computer without authorization or exceeding authorized access, and
 4 thereby obtaining information from a protected computer, in violation of 18 U.S.C. § 1030(a)(2)(C), and
 5 conspiracy to commit extortion involving computers in violation of 18 U.S.C. §§ 1030(a)(7)(B), (b), and
 6 (c)(3)(A), did conceal the same, and did not as soon as possible make known the same to some judge or
 7 other person in civil or military authority under the United States, all in violation of Title 18, United
 8 States Code, Section 4.

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

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

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

13 JOSEPH SULLIVAN

14 for the purpose of executing the material scheme and artifice to defraud investors, and for obtaining
 15 money and property from investors by means of materially false and fraudulent pretenses,
 16 representations, promises, and material omissions with a duty to disclose, did knowingly transmit and
 17 cause to be transmitted by means of wire communication in interstate commerce certain writings, signs,
 18 signals, and pictures, that is, electronic mail messages between an Uber employee and the two hackers
 19 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.

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

6 FOREPERSON

7 STEPHANIE M. HINDS
8 Acting United States Attorney

9 /s/ Andrew Dawson

10 ANDREW F. DAWSON
11 Assistant United States Attorneys

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

Count One: 18 U.S.C. 1505 - Obstruction of Justice Petty
Count Two: 18 U.S.C. 4 - Misprision of a Felony Minor
Count Three: 18 U.S.C. 1343 - Wire Fraud Misdemeanor
 Felony

PENALTY: See Attached

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEFENDANT - U.S.

▶ JOSEPH SULLIVAN

DISTRICT COURT NUMBER
3:20-cr-00337 WHO

FILED

Dec 22 2021
Mark B. Busby
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

Federal Bureau of Investigation

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

this is a reprosecution of charges previously dismissed which were dismissed on motion of:
 U.S. ATTORNEY DEFENSE } SHOW DOCKET NO.

this prosecution relates to a pending case involving this same defendant } MAGISTRATE CASE NO.

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under } 3:20-71168

Name and Office of Person Furnishing Information on this form Stephanie M. Hinds
 U.S. Attorney Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned) Andrew Dawson

DEFENDANT

IS NOT IN CUSTODY

- 1) Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges ▶
- 2) Is a Fugitive
- 3) Is on Bail or Release from (show District)

N.D. Cal.

IS IN CUSTODY

- 4) On this charge
- 5) On another conviction } Federal State
- 6) Awaiting trial on other charges
If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No } If "Yes" give date filed

DATE OF ARREST ▶ Month/Day/Year
N/A

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY ▶ Month/Day/Year

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT

If Summons, complete following:

Arraignment Initial Appearance

Defendant Address:

Bail Amount: _____

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____ Before Judge: _____

Comments:

United States v. Sullivan
Attachment to Form AO 257

Count One: 18 U.S.C. 1505 – Obstruction of Justice

Penalties:

- 5 years in prison
- \$250,000 fine
- 3 years of supervised release
- \$100 special assessment
- Restitution

Count Two: 18 U.S.C. 4 – Misprision of a Felony

Penalties:

- 3 years in prison
- \$250,000 fine
- 1 year of supervised release
- \$100 special assessment
- Restitution

Count Three: 18 U.S.C. 1343 – Wire Fraud

Penalties:

- 20 years in prison
- \$250,000 fine
- 3 years of supervised release
- \$100 special assessment
- Restitution

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

FILED

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

CRIMINAL COVER SHEET

Instructions: Effective November 1, 2016, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case.

CASE NAME:

USA v. JOSEPH SULLIVAN

CASE NUMBER:

CR 3:20-cr-00337 WHO

Is This Case Under Seal?

Yes No

Total Number of Defendants:

1 2-7 8 or more

Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?

Yes No

Venue (Per Crim. L.R. 18-1):

SF OAK SJ

Is this a potential high-cost case?

Yes No

Is any defendant charged with a death-penalty-eligible crime?

Yes No

Is this a RICO Act gang case?

Yes No Assigned AUSA
(Lead Attorney): Andrew Dawson

Date Submitted: 12/22/2021

Comments: