

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA)
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v.)
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)
DAMON PATRICK TOEY,)
)
Defendant.)

08 No. **CR 10.2.2.5** WGY

VIOLATIONS:
18 U.S.C. § 371 (Conspiracy)
18 U.S.C. § 1030(a)(2)(C) (Unauthorized Access to
Computer Systems)
18 U.S.C. § 1029(a)(3) (Access Device Fraud)
18 U.S.C. § 1028A (Aggravated Identity Theft)
18 U.S.C. §§ 1029(c)(1)(C), 982(a)(2)(B), 981(a)
(1)(C), 28 U.S.C. § 2461(c) (Criminal Forfeiture)

INFORMATION

COUNT ONE
(Conspiracy)
18 U.S.C. § 371

The U.S. Attorney charges that:

1. From approximately 2003 through 2008, in the Southern District of Florida, the District of Massachusetts and elsewhere,

DAMON PATRICK TOEY,

and others known and unknown to the U.S. Attorney, did willfully conspire to commit the following offenses against the United States:

- a. Unlawful Access to Computers (18 U.S.C. § 1030(a)(2)(C)) – by means of interstate communications, intentionally accessing without authorization computers, which were used in interstate commerce, and thereby obtaining information from those computers, including credit and debit card information, for the purposes of commercial advantage and private

financial gain;

- b. Access Device Fraud (18 U.S.C. § 1029(a)(3)) – knowingly and with intent to defraud, possessing at least fifteen unauthorized access devices, to wit: stolen credit and debit card numbers;
- c. Wire Fraud (18 U.S.C. § 1343) – having devised and executed a scheme to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, transmitting and causing to be transmitted, in interstate commerce, wire communications, including writings, signals and sounds, for the purpose of executing the scheme to defraud;
- d. Aggravated Identity Theft (18 U.S.C. § 1028A) – knowingly transferring, possessing and using without lawful authority, a means of identification of other persons – to wit: credit and debit card account numbers of individuals – during and in relation to the commission of wire fraud (in violation of 18 U.S.C. § 1343);
- e. Money Laundering (18 U.S.C. § 1956(a)(1)(B)(i) and (a)(2)(B)(i)) – knowing that the financial transactions, transmittals and transfers were designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of specified unlawful activity and that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, (i) knowingly conducting and attempting to conduct financial transactions affecting

interstate and foreign commerce, which involved the proceeds of said specified unlawful activity, and (ii) knowingly transmitting and transferring funds from a place inside the United States to and through a place outside the United States and to a place inside the United States from and through a place outside of the United States.

Manner and Means of the Conspiracy

2. TOEY and his co-conspirators, known and unknown to the U. S. Attorney, employed the following manner and means and others in furtherance of the conspiracy:
 - a. The conspirators unlawfully gained electronic access to corporate computer networks using various techniques;
 - b. The conspirators downloaded from those computer networks customers' credit and debit card information;
 - c. The conspirators fraudulently used the credit and debit card information to obtain cash advances and sold the information to others for fraudulent use by them; and
 - d. The conspirators moved money through Internet currency exchanges and bank accounts in Latvia to conceal and disguise the nature, location, source, ownership and control of the proceeds of this activity.

Overt Acts

3. In furtherance of the conspiracy and to effect its objects, TOEY and his co-conspirators committed the following overt acts, among others:
 - a. In or about 2004-2006, TOEY sold "dumps" of victims' credit and debit card numbers on behalf of co-conspirator Albert Gonzalez ("Gonzalez"), splitting the

proceeds with him.

- b. In or about 2007-2008, TOEY collaborated with Gonzalez on Internet-based attacks, often SQL injection attacks, to find vulnerabilities in corporate computer networks and gain access to track 2 data, accounts and files on corporate computer networks.
- c. In or about 2008, TOEY gained unlawful electronic access to a computer server utilized by Forever 21 (a specialty retailer) and then provided that access to co-conspirator Gonzalez for the purpose of downloading credit card information of customers of Forever 21.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO
(Access Device Fraud)
18 U.S.C. § 1029(a)(3)

4. In or about October, 2004, in the Eastern District of Virginia and elsewhere,

DAMON PATRICK TOEY

knowingly, and with intent to defraud, possessed at least 15 unauthorized access devices, to wit:
stolen credit and debit card numbers.

All in violation of Title 18, United States Code, Sections 1029(a)(3) and 2.

COUNT THREE
(Aggravated Identity Theft)
18 U.S.C. § 1028A(a)(1)

5. In or about October, 2004, in the Eastern District of Virginia and elsewhere,

DAMON PATRICK TOEY

knowingly transferred, possessed, and used, without lawful authority, means of identification of others persons - to wit: credit and debit card numbers of individuals – during and in relation to the commission of wire fraud (in violation of 18 U.S.C. § 1343).

All in violation of Title 18, United States Code, Sections 1028A(a)(1) and 2.

COUNT FOUR
(Unauthorized Access to Computer Systems)
18 U.S.C. § 1030(a)(2)(C)

6. In or about 2008, in the Southern District of Florida,

DAMON PATRICK TOEY,

by means of an interstate and foreign communication, intentionally accessed without authorization a computer, which was used in interstate and foreign commerce, and thereby aided and abetted the obtaining of information from that computer, which offense was committed for purposes of commercial advantage and private financial gain, to wit: profiting from selling stolen credit and debit card account numbers stored on computer servers operated by Forever 21.

All in violation of Title 18 United States Code, Sections 1030(a)(2)(C), 1030(c)(2)(B)(i), and 2.

FORFEITURE ALLEGATIONS

18 U.S.C. § 1029(c)(1)(C)

18 U.S.C. § 982(a)(2)(B)

18 U.S.C. § 981(a)(1)(C)

28 U.S.C. § 2461(c)

7. Upon conviction of one or more offenses in violation of 18 U.S.C. § 1029, charged in Count Two of this Information, and/or § 1030, charged in Count Four herein,

DAMON PATRICK TOEY,

defendant herein, shall forfeit to the United States: (1) any property constituting, or derived from, proceeds obtained directly or indirectly, as the result of one or more of the offenses, pursuant to 18 U.S.C. § 982(a)(2)(B); and (2) any property, real or personal, which constitutes or is derived from proceeds traceable to one or more of the offenses, pursuant to 18 U.S.C. § 981(a)(1)(C) and 20 U.S.C. § 2461(c). Such property includes, but is not limited to:

- a. approximately \$9,500.00 in United States currency, seized from Damon Patrick Toey on May 7, 2008;
- b. one Sony Vaio Laptop Computer, Serial No. PCG661L, seized from 3855 SW 79th Avenue, Apt. 52, Miami, Florida on May 7, 2008;
- c. one iPod Nano, Serial No. YM803E8KYOP, seized from 3855 SW 79th Avenue, Apt. 52, Miami, Florida on May 7, 2008;
- d. one Sony Vaio Laptop Computer, Serial No. PCG-6F1L, seized from 3855 SW 79th Avenue, Apt. 52, Miami, Florida on May 7, 2008;
- e. one Maxtor 300GB hard drive, Serial No. B60MCQRH, seized from 3855 SW 79th Avenue, Apt. 52, Miami, Florida on May 7, 2008;
- f. one Sony Vaio Laptop Computer, Serial No. J000D71Q, seized from 3855 SW 79th Avenue, Apt. 52, Miami, Florida on May 7, 2008;
- g. one XBOX 360, Serial No. 034144572407, seized from 3855 SW 79th Avenue, Apt. 52, Miami, Florida on May 7, 2008; and

h. one 512 MB memory unit, Serial #15251001884726, seized from 3855 SW 79th Avenue, Apt. 52, Miami, Florida on May 7, 2008,

(collectively, the “Assets”).

8. Upon conviction of one of more offenses in violation of 18 U.S.C. § 1029, charged in Count Two herein,

DAMON PATRICK TOEY,

defendant herein, shall forfeit to the United States any personal property used or intended to be used to commit the offense, pursuant to 18 U.S.C. § 1029(c)(1)(C). Such property includes, without limitation, the Assets.

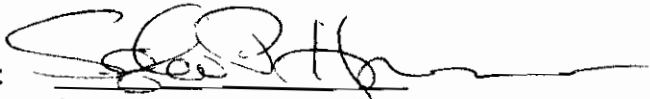
9. If any of the property described in paragraphs 7 and 8, as a result of any act or omission by the defendant –

- 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 of the Court,
- d. has been substantially diminished in value, or
- e. has been commingled with other property which cannot be subdivided without difficulty,

it is the intention of the United States, pursuant to 18 U.S.C. § 1029(c)(2) and/or § 982(b)(1), both of which incorporate 21 U.S.C. § 853(p), to seek forfeiture of any other property of the defendant up to the value of the property described above.

All pursuant to Title 18, United States Code, Sections 981, 982 and 1029, and Title 28,
United States Code, Section 2461.

MICHAEL J. SULLIVAN
United States Attorney

By: 
STEPHEN P. HEYMANN
Assistant U.S. Attorney

DATE: August 5, 2008