

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

UNITED STATES OF AMERICA)
)
)
 v.)
)
 IULIAN DOLAN)

1:11-cr-64-03-SM

**GOVERNMENT'S SENTENCING MEMORANDUM
AS TO DEFENDANT IULIAN DOLAN**

The Government submits this Sentencing Memorandum for the upcoming sentencing of Iulian Dolan, stemming from his participation in a massive, international computer hacking and credit card data theft scheme that, over the course of several years, victimized hundreds and hundreds of U.S. merchants, and hundreds of thousands of U.S. payment cardholders and their banks. Dolan pled guilty, pursuant to a binding Rule 11 plea agreement, to three of the four counts in the indictment. He pled guilty to conspiracy to commit computer-related fraud in violation of Title 18, United States Code, Sections 371, 1030(a)(5)(A) (Count One), conspiracy to commit fraud in connection with access devices, in violation of Title 18, United States Code, Sections 1029(b)(2),(a)(2) (Count Three) and 1029 (b)(2), (a)(3) (Count Four). As part of his plea agreement, Dolan has agreed to a 7-year (84-month) sentence.

As set forth below, the seriousness of Dolan's crimes, coupled with the profound need to provide adequate specific deterrence to Dolan as well as to provide general deterrence to other hackers, dictate the government's recommendation that he be sentenced to 7 years. Moreover, a 7-year sentence would be in line with other sentences meted out to co-conspirators in this case as well as in other courts around the country that involved similar conduct.

1. Nature and Scope of Dolan's Criminal Conduct and Seriousness of Offense

As set forth in the PSI and the indictment, from 2009-2011, Dolan, operating from his home base in Romania, participated in a widespread, international hacking scheme that targeted and hacked into hundreds of U.S. merchants' "point-of-sale" ("POS") systems (in essence internet-connected, computerized cash registers) and then stole over a hundred thousand customers' credit, debit, and other payment card data that was stored on those POS systems. Dolan, along with his Romanian co-conspirators Adrian Tiberiu Oprea, Cezar Butu, and Florin Radu and others, then either used the stolen payment card data themselves to make unauthorized charges on the cardholders' compromised accounts or they re-sold the data on the black market to others who would do the same. One of the primary victims of the hacking scheme was the Subway restaurant franchise system, including a franchise located in New Hampshire.

With Oprea at the helm of the operation and Dolan joining him later as his trusted aide, ultimately, from 2009-2011, members of the conspiracy hacked into over 800 different merchants' computer networks, approximately 250 of which were Subway restaurant franchises. They compromised over 150,000 cardholder accounts from Subway restaurant franchises alone. Notably, Dolan himself was responsible for hacking into several hundred of those merchants' computers and stealing payment card data of approximately 6,000 cardholders. The majority of the payment card data came from about 20-30 of the POS systems that Dolan had hacked.

As set forth in more detail in the sentencing memorandum in support of Oprea's sentencing, looking at the Subway-related losses alone, Oprea and his co-conspirators caused an estimated \$12.5 million in unauthorized charges to be made on the accounts that they had

compromised at Subway restaurants. In addition, they caused Subway to spend over \$5 million in remediation expenses responding to the hacking scheme.

Dolan and his co-conspirators essentially wreaked havoc on Subway, both at the corporate level and at the individual franchise level. Subway launched a massive investigation to try to locate the source of the breach and scrambled to implement software and hardware adjustments to try to block the flow of payment card data out of its hacked POS systems. With over 25,000 different Subway restaurant franchises potentially exposed and with 150,000 cardholders' accounts at risk, Subway expended close to \$200 per franchise to try to find the holes and stop the leaks.

2. Dolan's Role in the Conspiracy

Oprea was the mastermind of the operation, and Dolan was his trusted aide. Dolan, who, like Oprea has a background in computers, was a long-time friend of Oprea's. With Oprea's help and guidance, Dolan was responsible for (1) targeting U.S. merchants' POS systems, (2) hacking into those POS systems and installing the "keystroke logging" software programs on those POS systems, which recorded and stored the stolen payment card data, and (3) ex-filtrating the stolen card data to the "dump sites" that Oprea had set up to store the stolen card data, hacker tools, and other items that he used. Ultimately, Dolan would transfer the payment card data to Oprea, who would in turn pay him for his efforts. Thereafter, as Dolan was fully aware, Oprea would monetize their efforts by making unauthorized charges on the compromised accounts or selling the data to others on the black market who would re-sell to still others or make unauthorized charges themselves. Oprea paid Dolan several thousand dollars for his help.

3. The Government's Guideline's Calculation

The Government believes that the following Guideline calculation applies:

§2B1.1 – Conspiracy, Computer Fraud, and Access Device Fraud

§2B1.1(a)(2)	Base	6
§2B1.1(b)(1)(J)	Loss \$2.5-7 million	18
§2B1.1(b)(2)(C)	250 or more victims	6
§2B1.1(b)(9)(B)	Sophisticated means/overseas ops	2
§2B1.1(b)(11)	Access device offense	2
§2B1.1(b)(17)	1030(a)(5)(A) offense	4
§2B1.1 Total		38
Acceptance of responsibility adjustment		<u>-3</u>
Adjusted offense level		35

For a defendant in Criminal History category I, this results in an advisory guideline sentence range of 168-210 months. The government recommends that Dolan receive a 7-year sentence, which would be in line with similar “carding” sentences, as well as with his co-conspirators’ sentences of a requested 15 years and 2 years, respectively. As set forth below, the PSI contains the same offense level calculation.

5. Loss Calculation

In calculating the loss figure, the government has used the statutory loss amount of \$500 per stolen card, pursuant to 2B1.1(F)(i). Dolan himself stole 6,000 payment cards as a result of

his role in the conspiracy. Multiplying that by \$500 per card yields a \$3 million loss figure, resulting in an 18 level increase.

As set forth in the government's sentencing memorandum regarding Oprea, the government estimates that the conspiracy caused approximately \$17.5 million in actual losses and compromised more than 150,000 accounts. Nevertheless, the government agrees with the PSI and does not believe that Dolan should be held responsible for the full loss amount. He did not participate in the conspiracy throughout the entire period, played much less of a role than Oprea, and profited only minimally. Rather, he should be held responsible for the 6,000 payment cards that he personally stole.

6. Other Enhancements

The government is also recommending a six-level enhancement for multiple victims, given that over 6,000 cardholders had their accounts compromised and Dolan himself hacked into hundreds of merchants' POS systems. See also §2B1.1, Comment 4(e) (defining identity theft "victim" to include those whose means of identification were stolen, irrespective of whether they actually sustained monetary losses). The government is also recommending a two-level enhancement under §2B1.1(b)(10)(B) and (C) for sophisticated means/overseas operations. As the Guidelines note indicates, this enhancement applies if "a substantial part of a fraudulent scheme was committed from outside the United States." Here, the bulk of the scheme took place in and from Romania. Furthermore, Dolan employed sophisticated means in the hacking scheme---he engaged in port scanning, installing malware remotely over the internet, ex-filtrating data to dump sites, and he used multiple computers as well as IP addresses outside of Romania to hide his identity.

The government also recommends a two-level enhancement under 2B1.1(b)(11) because the offense involved trafficking in access devices (here, payment card account numbers and other information). Dolan pleaded guilty to Counts One, Three and Four of the indictment. Count Three charged him with conspiracy in connection with trafficking in access devices, in violation of 18 U.S.C. § 1029. Additionally, Dolan should receive a four-level enhancement under 2B1.1(b)(17) for engaging in a hacking crime that involved the installation of malicious software code (e.g., the keystroke loggers) under 18 U.S.C. § 1030(a)(5)(A). Dolan plead guilty to Count One, which charges him with conspiracy to violate 18 U.S.C. § 1030(a)(5)(A), among other crimes. (Indictment ¶9(c)).

7. Recommendation for 7-Year Sentence

A 7-year sentence is fair and appropriate in light of several factors. First, a 7-year sentence is needed to deter Dolan from engaging in future criminal activity. A strong sentence is also needed to deter other would-be hackers. If hackers around the world know that they can hide out safely in their home countries, remotely hack into hundreds of U.S. merchants' computers, steal hundreds of thousands of U.S. cardholder's account information out of those computers, cause millions of dollars in losses, and do so with minimal punishment, then they will likely continue to engage in these crimes and injure more victims. These predators presumably already realize that it is extremely unlikely that they will be detected and criminally charged by U.S. authorities. They also undoubtedly realize that, even if they are detected and charged, it is even less likely that they will then either be lured or extradited to the U.S. If, on top of that, they learn that the punishments that are ultimately meted out to other hackers who have been caught are fairly mild, then there is a serious risk that these predators will do a "cost-benefit" analysis and continue their crimes unabated. They will continue hacking into companies' POS

systems, continue stealing cardholders' data, and continue wreaking havoc on businesses and cardholders alike. They will instead chalk up the minimal risk of apprehension and mild punishment to the "cost of doing business," and they will continue their criminal conduct, undeterred.

Nevertheless, the government does not believe that a higher sentence is necessary, or warranted, despite the guideline calculation. It bears noting that over a three-year period, Dolan only made approximately \$10,000 from his criminal activity. Furthermore, Dolan, virtually as soon as he was arrested, agreed to plead guilty and cooperate. He gave a full confession upon his arrest, and he came in for multiple proffer sessions. He provided as much information not only as to the charged co-conspirators but as to others involved overseas as well.

Third, the 7-year sentence is in line with other sentences handed down recently in other, similar hacking/carding prosecutions, particularly in comparison to the number of accounts that were compromised. In 2013, in the Western District of Washington, David Schrooten, 22, was sentenced to 12 years for a carding scheme involving 100,000 compromised cards and only two hacked businesses. In that case, Schrooten acted as the broker, whereas his co-conspirator, Christopher Schroebel, 21, was the hacker. Schroebel was sentenced to seven years. Here, although Dolan acted as one of the hackers in the scheme, the scheme in which he participated involved almost twice as many compromised cards and hundreds more hacked businesses. In 2012, in the Eastern District of New York, Aleksandr Suvorova was sentenced to seven years for hacking into 11 restaurants and selling 160,000 stolen cards to an undercover agent. In November 2011, also in the Eastern District of New York, Lin Mun Poo was sentenced to 10 years for a hacking and carding scheme involving 120,000 stolen credit cards. In 2012, in the

Eastern District of Virginia, Peter Borgia, 22, was sentenced to four years for a carding scheme involving 21,000 stolen cards and \$3 million in actual losses.

A 7-year sentence would also be in line with other sentences meted out in this case. One of Dolan's co-conspirator's, Butu, was sentenced to two years, and the government is seeking at 15-year sentence for Dolan's other co-conspirator, Oprea. Butu was merely a relatively very small buyer and re-seller for Oprea, and accordingly, played a much less significant role. He had no involvement on the front-end of the conspiracy. Oprea was the ringleader of the scheme and brought Dolan into it about a year into the conspiracy. Accordingly, Oprea is deserving of a higher sentence. But Dolan was Oprea's right hand man, and he used his computer skills to help Oprea hack into POS systems and ex-filtrate the stolen payment card data.

8. Restitution

Actual restitution has not been determined. Each issuing bank whose cards were hacked and then upon which fraudulent charges were made has sustained a loss. As noted in the PSI, at paragraphs 17 & 66, 18 U.S.C. §3663A(c)(3)(A) provides that where the number of identifiable victims is so large as to make restitution impracticable, otherwise mandatory restitution need not be ordered. In this case, identifying each loss of each issuing bank has not been done because it is not as easily ascertainable as the casual observer would think. Nonetheless, Subway, the primary victim in this case, has sustained out-of-pocket losses of approximately \$5 million, independent of the losses directly associated with the hacked card data. Those losses were incurred as a result of remediation efforts necessitated by the criminal scheme in which Dolan was involved. Dolan was personally responsible for hacking approximately 6,000 of the approximately 150,000 cards hacked through Subway franchises; 4% of the total. Consequently,

the government submits that he should be ordered to pay 4% of Subway's \$5 million out of pocket losses, which is \$200,000.

9. Conclusion

The government asks the Court to sentence Dolan to the following:

- 7 years in prison, as agreed to in the 11(c)(1)(C) Plea Agreement;
- 3 years supervised release;
- \$200,000 in restitution;
- no fine, in light of the defendant's financial state and the restitution order; and,
- a \$300 special assessment.

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Respectfully submitted,

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CERTIFICATION OF SERVICE

I certify that a copy of this Sentencing Memorandum has been served upon counsel for defendants Oprea and Dolan via ecf filing notice, and on the Probation Department via .pdf e-mail attachment.

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