

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

BY:  COMPLAINT  INFORMATION  INDICTMENT  
 SUPERSEDING

**OFFENSE CHARGED**

Please see attached

- Petty
- Minor
- Misdemeanor
- Felony

**PENALTY:**

Please see attached

**CR**

Name of District Court, and/or Judge/Magistrate Location  
NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL FILED

DEFENDANT - U.S.

07 JAN 10 PM 3:24

BRYAN C. WAGNER, a/k/a Mike@yahoo.com

RICHARD W. WIEKING  
U.S. DISTRICT COURT  
NO. 10-00016 (CASE 1)

DISTRICT COURT NUMBER

**07 00016 JF**

**PROCEEDING**

Name of Complainant Agency, or Person (& Title, if any)  
FBI - DANA MARINO AND CHRISTOPHER R. HAUSER

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:

SHOW DOCKET NO.

U.S. Att'y  Defense

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

Name and Office of Person Furnishing Information on THIS FORM

KEVIN V. RYAN

U.S. Att'y  Other U.S. Agency

Name of Asst. U.S. Att'y (if assigned)

MARK L. KROTOSKI

**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)

**IS IN CUSTODY**

- 4)  On this charge
- 5)  On another conviction }  Fed'l  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

Or... if Arresting Agency & Warrant were not

Month/Day/Year

DATE TRANSFERRED TO U.S. CUSTODY

This report amends AO 257 previously submitted

**ADDITIONAL INFORMATION OR COMMENTS**

**PROCESS:**

SUMMONS  NO PROCESS\*  WARRANT Bail Amount: \_\_\_\_\_

If Summons, complete following:

Arraignment  Initial Appearance

Defendant Address: \_\_\_\_\_

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

Date/Time: \_\_\_\_\_

Before Judge: \_\_\_\_\_

Comments: \_\_\_\_\_

**Attachment Penalty Sheet for  
United States v. Bryan C. Wagner**

**Count One:** Conspiracy (18 U.S.C. § 371)

Penalty: Maximum 5 years imprisonment;  
Maximum \$250,000 or twice the value of the property involved in  
the transaction, whichever is greater;  
Maximum 3 years supervised release;  
Mandatory \$100 Special Assessment.

**Count Two:** Aggravated Identity Theft, and Aiding and Abetting(18 U.S.C. §§ 1028A and 2)

Penalty: Mandatory Minimum 2 years imprisonment;  
Maximum \$250,000 or twice the value of the property involved in  
the transaction, whichever is greater;  
Maximum 2 years supervised release;  
Mandatory \$100 Special Assessment.

ORIGINAL  
FILED

07 JAN 10 PM 3: 24

RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. 107-00016

1 KEVIN V. RYAN (CASBN 118321)  
2 United States Attorney

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11  
12 UNITED STATES OF AMERICA

**CR**

**07 CR 00016**

**JF**

13 Plaintiff,

14 v.

15 BRYAN C. WAGNER,

16 Defendant.

17  
18 VIOLATIONS: 18 U.S.C. § 371 -  
19 Conspiracy to Commit Aggravated Identity  
20 Theft; Wire Fraud; Unauthorized Computer  
21 Access to Information; Falsely Represent  
22 An Assigned Social Security Account  
23 Number; Disclose and Use a Social Security  
24 Number; 18 U.S.C. § 1028A - Aggravated  
25 Identity Theft; 18 U.S.C. § 2 - Aiding and  
26 Abetting

27 SAN JOSE VENUE

28 The United States Attorney charges:

INFORMATION

At all times relevant to this matter:

Background

Hewlett-Packard

1. Hewlett-Packard Development Company, L.P. ("HP"), was a technology company, with corporate headquarters located in Palo Alto, California.

Security Outsourcing Solutions

2. Security Outsourcing Solutions ("SOS") was a security outsourcing and

1 consulting company, which was located in Boston, Massachusetts.

2 3. SOS had provided investigative services to HP in the past. HP engaged the  
3 services of SOS to assist in obtaining information used in two investigations conducted by HP,  
4 (“the Kona I” and “Kona II” HP investigations), described more fully below.

5 Action Research Group

6 4. Action Research Group (“ARG”) was an information provider which was located  
7 in Melbourne, Florida.

8 5. SOS engaged the services of ARG to assist in obtaining information used in the  
9 Kona I and Kona II HP investigations, described more fully below.

10 Defendant Wagner

11 6. Defendant Bryan Wagner was a resident of Littleton, Colorado, and Omaha,  
12 Nebraska. Defendant Wagner previously worked for ARG. ARG engaged the services of  
13 defendant Wagner to assist with obtaining confidential and personal information for the Kona I  
14 and Kona II HP investigations, described more fully below.

15 HP Kona Investigations

16 7. HP and SOS officials commenced two HP investigations which they called  
17 “Kona” or “Kona I,” beginning in or about April 2005, and “Kona II,” starting in or about  
18 January 2006 (collectively “HP Kona Investigations”). One objective of the HP Kona  
19 Investigations was to identify potential leaks from HP officials to news reporters. HP and SOS  
20 officials pursued a number of avenues during the investigations, including but not limited to  
21 requesting and obtaining confidential and personal information of subjects they targeted and  
22 selected (collectively “HP Kona Subjects”). The HP Kona Subjects involved numerous  
23 individuals, including but not limited to (1) HP board members, employees, and others affiliated  
24 with HP; (2) the family members of the HP board members, employees, and others affiliated  
25 with HP; (3) reporters of CNET, the Wall Street Journal, the New York Times, and Business  
26 Week; and (4) the family members of these reporters.

27 8. The confidential and personal information sought during the HP Kona  
28 Investigations included but was not limited to the names; residential and business addresses;

1 residential, business and personal telephone numbers; dates of birth; social security numbers;  
2 and confidential telephone records, including call logs, billing records, call registers and  
3 subscriber information (collectively "confidential and personal information").

4 9. The HP Kona Investigations pursued and used a number of means to obtain the  
5 confidential and personal information of the HP Kona Subjects. For example, the co-  
6 conspirators engaged in fraud and deceit, including but not limited to the misrepresentation of  
7 identity to obtain the confidential and personal information belonging to others (sometimes  
8 called "pretexting"). The co-conspirators also obtained and used the Social Security Numbers of  
9 the HP Kona Subjects, without their knowledge or consent, to obtain further confidential  
10 information, including telephone records.

11 COUNT ONE: (18 U.S.C. § 371 - Conspiracy to Commit Aggravated Identity Theft; Wire  
12 Fraud; Unauthorized Computer Access to Information; Falsely Represent  
13 An Assigned Social Security Account Number; Disclose and Use a Social  
Security Number)

14 10. The allegations in paragraphs One through Nine are re-alleged and incorporated  
15 herein as if set forth in full.

16 11. Beginning at a time unknown, but not later than in or about April 2005, and  
17 continuing thereafter up to and including through in or about September 2006, in the Northern  
18 District of California, and elsewhere, the defendant,

19 BRYAN C. WAGNER,

20 and others known and unknown to the United States, did knowingly agree, combine and conspire  
21 to commit offenses against the United States, that is:

22 A. To knowingly transfer, possess, and use, without lawful authority, a means of  
23 identification of another person during and in relation to wire fraud (18 U.S.C. §  
24 1343), and a violation of the Social Security Act (42 U.S.C. § 408), in violation of  
Title 18, United States Code, Section 1028A;

25 B. To knowingly devise and execute, and attempt to devise and execute, a scheme  
26 and artifice to defraud, and for obtaining money and property of others, whose  
27 identities are known and unknown to the United States, by means of material false  
28 and fraudulent pretenses, representations, and promises, and for the purpose of  
executing the scheme and artifice, transmitting or causing to be transmitted, by  
means of wire communications in interstate commerce certain writings, signs,  
signals, pictures, or sounds, in violation of Title 18, United States Code, Section  
1343;

1 C. To intentionally access a computer without authorization, and exceed authorized  
2 access, and thereby obtain information from any protected computer if the  
3 conduct involved an interstate or foreign communication, and attempt to do so, in  
4 violation of Title 18, United States Code, Sections 1030(a)(2)(C), 1030(b);

5 D. With the intent to deceive, for the purpose of obtaining anything of value from  
6 any person, and for any other purpose, falsely represents a number to be the social  
7 security account number assigned by the Commissioner of Social Security to him  
8 or to another person, when in fact such number is not the social security account  
9 number assigned by the Commissioner of Social Security to him or to such other  
10 person, in violation of Title 42, United States Code, Section 408(a)(7);

11 E. To knowingly disclose, use, and compel the disclosure of the Social Security  
12 Number of any person in violation of the laws of the United States, that is, wire  
13 fraud, and unauthorized computer access to information, in violation of 42 U.S.C.  
14 § 408(a)(8).

15 II. MANNER AND MEANS OF THE CONSPIRACY

16 In furtherance of the conspiracy, the defendants, and others known and unknown to the  
17 United States, employed among others, the following manner and means:

18 12. It was a part of the conspiracy that the conspirators selected and targeted the HP  
19 Kona Subjects, as potential leaks from HP officials to news reporters.

20 13. It was further a part of the conspiracy that the conspirators collected the  
21 confidential and personal information belonging to the HP Kona Subjects. For example, as part  
22 of the conspiracy, the conspirators collected and obtained the Social Security Numbers of many  
23 of the HP Kona Subjects.

24 14. It was further a part of the conspiracy that the conspirators provided the  
25 confidential and personal information of the HP Kona Subjects to one another and others for the  
26 purpose of obtaining additional confidential and personal information of the HP Kona Subjects.

27 15. It was further a part of the conspiracy that the conspirators engaged in fraud and  
28 deceit to obtain additional confidential and personal information of the HP Kona Subjects,  
including the misrepresentation of identity to obtain information belonging to others.

16. It was further a part of the conspiracy that the conspirators transmitted  
confidential and personal information (including the social security numbers) of HP Kona  
Subjects to others as part of the HP Kona Investigations.

17. It was further a part of the conspiracy that the conspirators used email accounts

1 and interstate telephone calls to communicate with one another concerning the conspiracy,  
2 including with individuals in Palo Alto, California; Boston, Massachusetts; Melbourne, Florida;  
3 Omaha, Nebraska, and other locations.

4 18. It was further a part of the conspiracy that the conspirators used e-mail accounts,  
5 including with Yahoo and Hotmail, to establish the online account access for the telephone  
6 services of HP Kona Subjects.

7 19. It was further a part of the conspiracy that the conspirators prepared Project Kona  
8 Reports and other presentations concerning the nature and status of the HP Kona Investigations.

9 III. OVERT ACTS

10 20. In furtherance of the conspiracy, and to effectuate its objects, defendant BRYAN  
11 C. WAGNER committed overt acts, in the Northern District of California, and elsewhere,  
12 including but not limited to:

13 a. On or about March 8, 2006, defendant BRYAN C. WAGNER established  
14 an online account for the local telephone service of Reporter Number One known to the United  
15 States, by using the social security number of the reporter. The telephone record information  
16 was requested by other co-conspirators. The social security number of the reporter was provided  
17 to defendant BRYAN C. WAGNER by other co-conspirators.

18 b. On or about March 8, 2006, defendant BRYAN C. WAGNER used an e-  
19 mail account, mike@yahoo.com, to establish the account for the telephone service of the  
20 reporter.

21 c. On or about March 8, 2006, defendant BRYAN C. WAGNER accessed  
22 the online account of Reporter Number One and obtained the reporter's telephone records.

23 d. On or about March 8, 2006, defendant BRYAN C. WAGNER provided  
24 the telephone records of the reporter to other co-conspirators.

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

26 // // //

27 // // //

28 // // //

1 COUNT TWO: (18 U.S.C. §§ 1028A and 2 - Aggravated Identity Theft; Aiding and Abetting)

2 21. Paragraphs One through Nine are realleged and incorporated as if fully set forth  
3 below.

4 22. On or about March 8, 2006, in the Northern District of California and elsewhere,  
5 defendant,

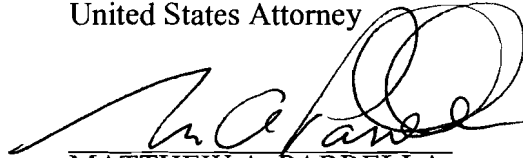
6 BRYAN C. WAGNER,

7 knowingly and without lawful authority transferred, possessed and used a means of identification  
8 of another person, that is, the Social Security Numbers and other identification information of  
9 other persons, whose identities are known and unknown to the United States, during and in  
10 relation to wire fraud (18 U.S.C. § 1343), and in violation of the Social Security Act (42 U.S.C.  
11 § 408).


12 All in violation of Title 18, United States Code, Sections 1028A and 2.

13 Dated: January 10, 2007

14 KEVIN V. RYAN  
United States Attorney



16 MATTHEW A. PARRELLA  
Chief, San Jose Branch

17  
18 (Approved as to form: )

AUSA MARK L. KROTOSKI