

UNITED STATES DISTRICT COURT

for the

District of Columbia

United States of America)

v.)

Wen Jin Gao,)

Haotian Sun,)

Dian Luo,)

Pengfei Xue)

Case No.

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of June 2017 through Sept. 2019 in the county of in the District of Columbia, the defendant(s) violated:

Code Section

Offense Description

18 U.S.C. § 1349

Conspiracy to Commit Mail Fraud

This criminal complaint is based on these facts:

See Attached Affidavit

Continued on the attached sheet.

Complainant's signature

Stephen Cohen, Postal Inspector

Printed name and title

Sworn to before me and signed in my presence.

Date: 12/02/2019

Judge's signature

City and state: Washington, D.C.

Robin M. Meriweather, U.S. Magistrate Judge

Printed name and title

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

v.

WEN JIN GAO,

HAOTIAN SUN,

DIAN LUO, and

PENGFEI XUE,

Defendants.

MISC. NO.

FILED UNDER SEAL

**AFFIDAVIT IN SUPPORT OF
CRIMINAL COMPLAINT AND ARREST WARRANT**

I, Stephen Cohen, being first duly sworn, hereby depose and state as follows:

I. IDENTITY OF THE AFFIANT

1. I have been a Postal Inspector with the United States Postal Inspection Service (“USPIS”) since 2016. I am currently assigned to the Columbia, Maryland office of the Washington Division Fraud Team. I am responsible for investigating various fraud-related offenses, including offenses involving mail fraud, wire fraud, bank fraud, work-at-home schemes, charity fraud, credit card fraud, investment fraud, fraud involving elderly victims, lottery fraud, and telemarketing fraud. I am a federal law enforcement officer within the meaning of Federal Rule of Criminal Procedure 41(a). I am therefore authorized to make applications for search and seizure warrants and to serve arrest warrants.

2. I am assigned to this investigation and my involvement has included, among other activities, interviewing witnesses, conducting surveillance, and reviewing financial records. This

investigation is being conducted jointly by USPIA and the United States Department of Homeland Security, Homeland Security Investigations (“HSI”).

3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents, witnesses, and agencies. This affidavit is intended to show merely that probable cause exists. It does not set forth all of my knowledge, or the knowledge of others, about this matter.

II. REASON FOR THE AFFIDAVIT

4. This affidavit is made in support of a criminal complaint charging WEN JIN GAO, HAOTIAN SUN, DIAN LUO, and PENGFEI XUE with conspiracy to commit mail fraud, in violation of 18 U.S.C. § 1349. This affidavit is also submitted in support of arrest warrants.

5. WEN JIN GAO is also known as “Wenjin Gao,” “James Gao,” “Wang Gao,” and “Jin Gao.” HAOTIAN SUN is also known as “Jack Sun,” “Frank Sun,” “Fransis Sun,” and “Jerry Sun.” GAO, SUN, LUO, and XUE reside in Maryland.

6. Since at least in or about June 2017 through in or about September 2019, GAO, SUN, LUO, XUE, and others schemed and conspired to defraud Apple Inc. (“Apple”) out of new iPhones. The manner and means by which they carried out the scheme involved obtaining iPhones that were out-of-warranty and/or which contained counterfeit parts (collectively hereinafter “suspected counterfeit phones”) and returning those suspected counterfeit phones to Apple (1) in person at Apple retail stores, (2) in person at authorized Apple service providers, or (3) through private and commercial interstate carrier. They returned phones under the false pretense that the suspected counterfeit phones were under warranty and should be replaced due to malfunction or other reason. Apple, wrongly believing that the person submitting the replacement request was entitled to a replacement, responded by providing a new iPhone either in person at an Apple retail store or by shipping a new iPhone to addresses provided by the conspirators, their

confederates, or Apple-authorized repair facilities. GAO, SUN, LUO, XUE, and their confederates have thereby defrauded Apple out of more than 2,700 new iPhones and attempted to defraud Apple of more than 1,300 additional iPhones.

III. BACKGROUND

7. An Apple Brand Integrity Investigator (“Apple Investigator”) advised law enforcement of a general fraud scheme where individuals in various parts of the United States receive suspected counterfeit phones from Hong Kong and then submit those phones to Apple for repair under the ruse that the phones are not functioning properly, all with the goal of getting Apple to provide them with genuine replacement iPhones. GAO, SUN, LUO, XUE, and their confederates have been involved in this type of scheme in the Washington, D.C., metropolitan area.

8. As part of the scheme, international packages containing suspected counterfeit phones were shipped from Hong Kong to the United States through DHL Express (“DHL”), which offers international courier, parcel, and express mail services. DHL has processing facilities in Northeast, Washington, D.C. (“DHL-DC”), Herndon, Virginia (“DHL-Herndon”), and Maryland at the Baltimore Washington International Thurgood Marshall Airport (“DHL-BWI”). HSI agents intercepted numerous packages at the DHL-DC, DHL-Herndon, and DHL-BWI facilities bound for the suspects in this investigation. Your affiant accompanied HSI agents during the interception of numerous packages. Upon intercepting these packages, law enforcement typically recorded each suspected counterfeit iPhone’s International Mobile Equipment Identity (“IMEI”) number and then allowed the shipments to be delivered to the intended recipients. The government then provided Apple with the IMEI numbers in an effort to see if any of the suspected counterfeit phones were submitted to Apple for repair. In response to legal process, Apple, in turn, provided the government with information about the returns, which included names, addresses, and/or email addresses used in conjunction with the returns.

9. Each iPhone has two unique identifiers that can be used to identify the product for service, the IMEI number and serial number. Both identifiers are assigned to the device but have no permanent relation to the subscriber possessing the device. Depending on the model of the phone, the IMEI number can be located (1) on the rear enclosure; (2) on the removable SIM tray; or (3) if the device can be fully powered on, by using software in the settings of the device.¹ The serial number can be identified (1) by using a hardware diagnostic tool called Serial Number Reader; (2) if the device can be fully powered on, by using software in the settings of the device; or (3) by using an internal search tool that requires opening the device to scan a QR code containing the serial number of the main logic board.

10. Under its warranty service and handset replacement program, Apple attempts to ensure a customer promptly receives a repaired or replacement phone upon Apple receiving a non-functioning phone for repair. Apple can reject a phone for repair and/or replacement if it determines that the device has been modified or is counterfeit. Apple has reported that a sampling of some of the suspected counterfeit phones submitted to Apple as part of this investigation suggests that the vast majority of suspected counterfeit phones each contained a “spoofed” IMEI number and serial number, i.e., duplicate numbers associated with an existing iPhone that was in-warranty at the time of the returns to Apple. In other words, the IMEI and serial numbers on the suspected counterfeit phones submitted for replacement belonged to other customers with in-warranty iPhones. Thus, when Apple employees conducted a preliminary review of these returned phones, the spoofed numbers led Apple to believe that the devices were legitimate iPhones, which were under warranty, and thus, were eligible for replacement iPhones.

¹ In fall 2018, Apple released the iPhone XS and XR; those phones and subsequent generation iPhones contain two IMEI numbers.

11. Apple offers customers multiple ways to submit an iPhone for repair or replacement under its warranty service and handset replacement program. A customer can (1) ship the phone back to Apple via the United Parcel Service (“UPS”) at no cost to the customer, (2) take a phone to an Apple retail store, or (3) take a phone to an authorized Apple Service provider.

12. To ship a phone via UPS, a customer must go to the iPhone Repair section of Apple’s website and provide some initial information about what is wrong with the phone. The customer must log in with the customer’s Apple ID, but to the extent the customer does not have an Apple ID, the customer can create one by supplying a first and last name and an email address. The customer must then supply an IMEI number, an address, phone number, and email address. Once that information is supplied, Apple creates a repair order number. A customer can take the repair order number to a UPS Store and UPS will take care of packaging the phone and shipping it back to Apple. Alternatively, a customer can have Apple send the customer a box and shipping label, which the customer can then provide to UPS. If Apple determines that a replacement phone is warranted, it will ship the phone to whatever shipping address was provided by the customer.

13. To return a phone to an Apple retail store, a customer must make an appointment in one of two ways. The customer can walk into an Apple retail store and schedule an appointment by supplying a name and email address; the customer has the option of providing a phone number. If the required store personnel are available, the appointment can occur immediately. A customer also can schedule an appointment online before going to an Apple Store by visiting the iPhone Repair section of Apple’s website and providing some initial information about what is wrong with the phone. The site requires the customer to log in with the customer’s Apple ID, but to the extent the customer does not have an Apple ID, the customer can create one by supplying a first and last name and an email address. The customer then must select the location of an Apple retail store to

which the customer will bring the phone and a time for the appointment. Once the customer arrives at the Apple store, the customer checks in. Regardless of whether an appointment is scheduled online or in person, when the customer ultimately presents an Apple Store employee with the customer's phone, the Apple system will determine whether it can be repaired in the store. If the phone cannot be repaired, a replacement phone may be issued immediately as long as the phone is under warranty. Alternatively, the phone may be sent to one of Apple's repair facilities for further evaluation. If the phone is out of warranty, the customer can pay to have the phone repaired and/or replaced.

14. When a phone is returned to Apple via an authorized third-party repair facility, the repair facility is responsible for repairing the phone or sending the phone to Apple for repair or replacement depending on the nature of the repair. If Apple determines that a replacement phone is warranted, Apple ships the replacement phone to the repair facility to return to the customer.

15. Apple flags potentially fraudulent warranty returns based on a variety of factors. This can result in Apple rejecting any requests to repair and/or replace a phone from a particular individual or address. In an apparent response to this safeguard, fraudsters often use multiple addresses and name variations in furtherance of schemes to defraud Apple. In this investigation, GAO, SUN, LUO, XUE, and other conspirators and confederates have used UPS Stores throughout Washington, D.C., Maryland, and Virginia: (1) to receive suspected counterfeit iPhones from Hong Kong, (2) to ship suspected counterfeit iPhones to Apple, and/or (3) to receive genuine replacement iPhones from Apple.

16. Apple reviewed the IMEI numbers of some, but not all, of the suspected counterfeit iPhones intercepted by law enforcement throughout the course of this investigation. Apple confirmed that some intercepted phones contained spoofed IMEI and serial numbers associated

with other existing iPhones that were in-warranty at the time of the returns to Apple. In addition, Apple analyzed a small sampling of iPhones recovered throughout the course of this investigation and confirmed that those phones contained counterfeit components.

IV. FACTS SURROUNDING PROBABLE CAUSE

17. The investigation identified suspected counterfeit iPhones that were shipped from Hong Kong to GAO, SUN, LUO, XUE, another conspirator, or confederate, and which were then submitted to Apple for replacement under various names, including GAO, SUN, LUO, XUE, and their confederates.

18. GAO opened at least one UPS Store mailbox in 2017 in Maryland. I have reviewed the application associated with that mailbox. It included a copy of GAO's Maryland driver's license. GAO also controlled a UPS Store mailbox opened by Person A in 2017 in Maryland. I have reviewed the application associated with that mailbox. Although the application included a copy of Person A's District of Columbia driver's license, the email address listed on the application is registered to GAO.

19. SUN opened at least eight UPS Store mailboxes in 2017 in Maryland. I have reviewed applications associated with all eight mailboxes. Each application included a copy of SUN's Maryland driver's license and his university photo identification card.

20. LUO opened at least one UPS Store mailbox in 2018 in Maryland. I have reviewed the application associated with that mailbox. It included a copy of his United States permanent resident card and his Maryland driver's license. Person B, LUO's relative, opened a UPS Store mailbox in 2018 in Maryland when, according to a UPS Store employee, LUO only had one form of identification that day. Person B told the UPS Store that LUO would be receiving packages at the store and had permission to pick up packages. I have reviewed the application associated with

that mailbox. It included Person B's U.S. Passport and Maryland driver's license, and LUO's Maryland driver's license.

21. XUE opened a UPS Store mailbox in 2018 in Maryland. I have reviewed the application associated with that mailbox. The application included XUE's Maryland driver's license. The same phone number and email address that were used on the LUO applications also were used on XUE's application.

22. On or about October 19, 2017, law enforcement agents inspected three international inbound packages at DHL-DC. All three packages were addressed to GAO at a UPS Store in Gaithersburg, Maryland. The packages contained a total of 36 suspected counterfeit iPhones. The following day, on or about October 20, 2017, law enforcement agents observed GAO leave his residence in Maryland and pick up the packages from the UPS Store. According to Apple, it received repair orders for all of the IMEI numbers; Apple replaced approximately 34 of the phones. Apple confirmed that one of the phones contained a spoofed serial number/IMEI number. The phones were returned to Apple through an authorized third-party repair facility, referred to here as Repair Facility 1. The email addresses provided to Apple in conjunction with the return of these phones were either registered to SUN or known to be used by him. According to Repair Facility 1, in total, SUN submitted more than 1,000 iPhones for repair under various email addresses.

23. On or about November 7, 2017, I inspected two plastic bags of trash that had been left for collection at the curb outside GAO's residence. One bag contained small white boxes in which iPhones are usually packaged. Some of the labels affixed to those boxes had the names LUO and XUE printed on them. The labels also included serial numbers and IMEI numbers. The other bag contained AppleCare service letters, FedEx receipts, third-party Apple repair facility receipts, commercial invoices, and UPS labels. Some receipts contained names, phone numbers, email

addresses, IMEI numbers, and serial numbers. GAO, SUN, XUE and Person C's names were all found on items in the second bag. According to Apple, approximately 105 phones associated with the information that was recovered from GAO's trash had been sent to it for repair. Approximately 49 listed GAO as the customer for those phones.

24. On or about November 8, 2017, law enforcement agents inspected a package at DHL-DC. The package originated from Hong Kong and was addressed to GAO at a UPS Store in Gaithersburg, Maryland. The package contained 22 suspected counterfeit iPhones. The package and its contents were detained by HSI for further verification of authenticity from Apple. Ten of the phones were shipped to Apple for analysis. Apple confirmed that the ten phones contained spoofed serial numbers/IMEI numbers. In or about May 2018, HSI sent notice of the package's seizure to GAO at the UPS Store in Gaithersburg, Maryland to which the shipment was addressed. The notice indicated that the phones bore counterfeit trademarks.

25. On or about January 19, 2018, U.S. Customs and Border Protection ("CBP") inspected three outbound packages that had been returned to the sender by a UPS Store in Ellicott City, Maryland. The UPS Store had refused to allow SUN to pick up the packages because the names on the packages, "Fransis S" and "Hao Sun," did not match the name he provided on the mailbox rental agreement, "Frank Sun." The packages contained a total of approximately 63 suspected counterfeit iPhones. On or about January 31, 2018, law enforcement agents interviewed SUN in Washington, D.C., returned the phones to him, and informed him that the phones were counterfeit and not legitimate. Despite that warning, according to Apple, approximately 57 of the phones were returned through Repair Facility 1 under email addresses either registered to SUN or known to be used by him, and all but three were replaced. Apple confirmed that thirteen of the returned phones contained spoofed serial numbers/IMEI numbers.

26. On or about January 23, 2018, law enforcement agents inspected four packages at DHL-DC. Each of the packages was shipped from Hong Kong.

- a. Two of the four packages were addressed to Person A at the UPS Store in Rockville, Maryland, where Person A leased a mailbox that GAO controlled. The packages contained a total of 50 suspected counterfeit iPhones. Apple indicated that 47 of the phones were returned to Apple through Repair Facility 1 under email addresses either registered to SUN or known to be used by him. Apple replaced 46 of the phones. Apple confirmed that three of the returned phones contained spoofed serial numbers/IMEI numbers.
- b. The third package was addressed to XUE at the UPS Store in Bethesda, Maryland, where XUE leased a mailbox. The package contained 23 suspected counterfeit iPhones. Apple indicated that 23 phones were returned to Apple through a third-party repair facility, referred to here as Repair Facility 2. XUE's name was associated with the return of all 23 phones. Apple replaced each of the phones. Apple confirmed that five of the returned phones contained spoofed serial numbers/IMEI numbers.
- c. The fourth package was addressed to LUO at a UPS Store in Potomac, Maryland.² The package contained 25 suspected counterfeit iPhones. Apple indicated that 24 of the phones were returned to Apple through Repair Facility 2. Apple replaced each of the phones. XUE's name was associated with the return of all 24 phones.

² Law enforcement attempted to pull the application for the relevant mailbox at this UPS Store, but no records were available.

Apple confirmed that 19 of the returned phones contained spoofed serial numbers/IMEI numbers.

27. On or about January 23, 2018, a law enforcement agent inspected three packages at DHL-Herndon. Each package originated from Hong Kong and was addressed to Person C at an address in Falls Church, Virginia. The packages contained a total of 100 suspected counterfeit iPhones. Apple indicated that 92 of the phones were returned to Apple through a third-party repair facility, referred to here as Repair Facility 3. The returns were submitted under the name “Jack Sun,” with an email address used by SUN, and the address of a UPS Store in Glen Burnie, Maryland where SUN leased a mailbox. Apple confirmed that four of the returned phones contained spoofed serial numbers/IMEI numbers.

28. On or about January 25, 2018, law enforcement inspected four packages at DHL-DC. Three were addressed to LUO at the UPS Store in Rockville, Maryland, where he leased a mailbox. The packages contained a total of 86 suspected counterfeit iPhones. Apple indicated that 81 of the phones were returned to Apple through a third-party repair facility, referred to here as Repair Facility 4. Apple replaced all but four of the phones. The returns were submitted under LUO’s name.

29. On or about January 31, 2018, law enforcement agents inspected six packages at DHL-DC. Each package was shipped from Hong Kong.

- a. Two of the packages were addressed to Person A at a UPS Store in Rockville, Maryland, where Person A leased a mailbox that GAO controlled. The packages contained a total of approximately 55 suspected counterfeit iPhones. Apple indicated that approximately 26 of the phones were returned to Apple through Repair Facility 2 under SUN’s name. Apple replaced approximately 22 of the

phones and indicated that two of the returned phones contained spoofed serial numbers/IMEI numbers. Apple indicated that approximately 21 phones were returned to Apple through a third-party repair facility, referred to here as Repair Facility 5, under SUN's name. Apple replaced 20 of the phones and indicated that four of the returned phones contained spoofed serial numbers/IMEI numbers.

- b. Two of the packages were addressed to LUO at a UPS Store in Rockville, Maryland, where he leased a mailbox. The packages contained a total of approximately 50 suspected counterfeit iPhones. Apple indicated that approximately 47 of the phones were returned to Apple through Repair Facility 4 under LUO's name. Apple replaced each of those phones. Apple confirmed that eight of the returned phones contained spoofed serial numbers/IMEI numbers.
- c. Two of the packages were addressed to XUE at a UPS Store in Bethesda, Maryland, where he leased a mailbox. The packages contained a total of approximately 45 suspected counterfeit iPhones. Apple indicated that 42 of the phones were returned to Apple through Repair Facility 4 under LUO's name. Apple replaced 33 of the phones. Apple reported that nine of the phones contained spoofed serial numbers/IMEI numbers.

V. **CONCLUSION**

30. Based upon the facts and circumstances contained in this affidavit, your affiant believes there is probable cause to issue arrest warrants for WEN JIN GAO, HAOTIAN SUN, DIAN LUO, and PENGFEI XUE for violating 18 U.S.C. § 1349 (Conspiracy to Commit Mail Fraud).

Respectfully submitted,

Postal Inspector Stephen Cohen
United States Postal Inspection Service

Sworn to and subscribed before me this _____ day of December, 2019.

UNITED STATES MAGISTRATE JUDGE