

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :  
 :  
 - v. - :  
 :  
 ROBERT BERNARDI, :  
 NIHAT CARDAK, and :  
 SUNIL CHANDRA, :  
 :  
 Defendants. :  
----- X

SEALED INDICTMENT

21 Cr.

**21 CRIM 616**

COUNT ONE  
(Conspiracy to Commit Securities Fraud)

The Grand Jury charges:

RELEVANT PERSONS AND ENTITIES

1. GigaMedia Access Corporation, d/b/a "GigaTrust" ("GigaTrust"), was, at all times relevant to this Indictment, a private company headquartered in Herndon, Virginia. GigaTrust purported to be a market-leading provider of cloud-based content security solutions that serviced millions of users.

2. ROBERT BERNARDI, the defendant, was, at all times relevant to this Indictment, President and Chief Executive Officer of GigaTrust. BERNARDI founded GigaTrust in or about 2000.

3. NIHAT CARDAK, the defendant, was, at all times relevant to this Indictment, the Chief Financial Officer of GigaTrust. CARDAK had been employed by GigaTrust since in or about 2006.

4. SUNIL CHANDRA, the defendant, was, at all times relevant to this Indictment, the Vice President of Business Development of GigaTrust. CHANDRA had been employed by GigaTrust since in or about 2006.

OVERVIEW OF THE FRAUDULENT SCHEME

5. From at least in or about 2016 through at least in or about 2019, ROBERT BERNARDI, NIHAT CARDAK, and SUNIL CHANDRA, the defendants, perpetrated a scheme to defraud investors and lenders by inducing them to purchase GigaTrust shares, and loan GigaTrust money, through false and misleading representations. BERNARDI, CARDAK, and CHANDRA, and their co-conspirators, fraudulently induced victims to invest in GigaTrust and lend money to GigaTrust by, among other things: (a) fabricating, causing to be fabricated, and disseminating false and misleading bank account statements that purported to represent GigaTrust's true bank account holdings; (b) fabricating, causing to be fabricated, and disseminating false and misleading audit materials that purported have been issued by GigaTrust's auditors; (c) forging, causing to forge, and disseminating a false and misleading letter purporting to be written by GigaTrust's New York-based counsel; and (d) impersonating and/or causing others to impersonate a purported customer and auditor of GigaTrust on telephone calls with a prospective lender of GigaTrust. As a result of the scheme, investors and lenders lost millions of dollars.

GigaTrust Fraudulently Attempts to Secure Debt and Equity  
Investments from a New York-Based Investor

6. In or about July 2018, GigaTrust sought financing from a New York-based investment firm ("Investment Firm-1"). As part of its diligence process, Investment Firm-1 requested, among other things, a copy of GigaTrust's most recent audited financial statements. In response to that request, on or about October 4, 2018, ROBERT BERNARDI, the defendant, sent, among other things, fraudulent audited financial statements to Investment Firm-1, which, among other things, overstated GigaTrust's 2017 revenue by over \$40 million. Ultimately, Investment Firm-1 did not make an investment into GigaTrust.

GigaTrust Fraudulently Secures a \$25 Million Line of  
Credit from Bank-1

7. In or about November 2018, GigaTrust sought financing from a New York-based financial institution ("Bank-1"), which was insured by the Federal Deposit Insurance Corporation ("FDIC"). As part of its diligence process, Bank-1 requested that GigaTrust provide Bank-1 with, among other things, copies of GigaTrust's bank statements from another financial institution ("Bank-2"). In response to that request, on or about December 14, 2018, NIHAT CARDAK, the defendant, emailed fraudulent bank statements to the investment banker representing GigaTrust in negotiations, who in turn emailed the fraudulent bank statements to Bank-1. The

fraudulent bank statements overstated GigaTrust's cash deposits by over \$25 million.

8. On or about January 17, 2019, based in part on GigaTrust's financial condition, as stated in the fraudulent bank statements, Bank-1 entered into a credit agreement with GigaTrust and made \$25,000,000 in revolving credit available to GigaTrust.

Bank-1 Notices Default Against GigaTrust and GigaTrust  
Fraudulently Secures Financing to Avoid Default

9. On or about May 8, 2019, Bank-1 issued a notice of default to GigaTrust for failure to comply with post-closing conditions of the credit agreement between GigaTrust and Bank-1, specifically that GigaTrust make Bank-1 its principal depository bank. On or about May 10, 2019, Bank-1 emailed ROBERT BERNARDI and NIHAT CARDAK, the defendants, and demanded that GigaTrust wire \$10 million to Bank-1 by May 13, 2019. On or about May 10, 2019, BERNARDI approached investors to loan money to GigaTrust. BERNARDI falsely represented to a group of existing GigaTrust investors (together "Investor Group-1") that Bank-1 had not yet noticed a default to GigaTrust. BERNARDI and CARDAK also agreed to fabricate, and did fabricate, a letter from GigaTrust's counsel ("Law Firm-1") assuring Investor Group-1 that GigaTrust was not in default. The letter, which BERNARDI emailed to an investor in Investor Group-1, purported to be signed by a partner at Law Firm-1 ("Law Firm Partner-1") and falsely claimed that

GigaTrust had not been issued a default by Bank-1. In truth and in fact, Law Firm Partner-1 did not author this letter and was not aware of it.

10. Between on or about May 10, 2019 and on or about May 13, 2019, GigaTrust's Bank-2 accounts received \$10,000,000 in wires from investors, including a \$4,000,000 wire from Investor Group-1 on or about May 13, 2019. In exchange, on or about May 13, 2019, ROBERT BERNARDI, the defendant, issued a \$4,000,000 promissory note to Investor Group-1 as well as a \$2,500,000 warrant. BERNARDI also transferred over \$2 million shares of GigaTrust preferred stock to Investor Group-1 at no cost.

11. On May 14, 2019, GigaTrust wired \$10,000,000 from Bank-2 to Bank-1.

GigaTrust Fraudulently Secures a \$25 Million Loan to Replace its  
\$25 Million Loan from Bank-1

12. In or around June 2019, GigaTrust began negotiating a \$25,000,000 credit facility with a commercial financing company ("Lender-1"). On or about July 15, 2019, Lender-1 requested a number of diligence items from GigaTrust, including three calls with GigaTrust customers and a discussion with GigaTrust's auditor ("Auditor-1").

13. Rather than put Lender-1 in touch with customers and Auditor-1, ROBERT BERNARDI and NIHAT CARDAK, the defendants, concocted a scheme to impersonate customers and a partner at

Auditor-1, so they could provide false information to Lender-1. Specifically, BERNARDI and CARDAK identified an audit partner at Auditor-1 ("Audit Partner-1") to impersonate on a telephone call and caused a co-conspirator not named herein ("CC-1") to impersonate Audit Partner-1 on a call with Lender-1. During that call, CC-1 falsely represented, among other things, that GigaTrust had clean financial statements that did not need major adjustments.

14. ROBERT BERNARDI and NIHAT CARDAK, the defendants, also recruited SUNIL CHANDRA, the defendant, to impersonate a customer of GigaTrust ("Customer-1") on a call with Lender-1. In furtherance of the scheme to impersonate GigaTrust's customers, on or about July 19, 2019, BERNARDI emailed CARDAK and stated, in substance and in part, "Look at the attached voice changers. Would these or any others work for customer calls. Need your help here." The email attached links to online listings for two electronic voice transformers designed to disguise the sound of a person's voice.

15. On or about July 22, 2019, SUNIL CHANDRA, the defendant, impersonated an employee of Customer-1 on the call with Lender-1. On that call, CHANDRA praised GigaTrust's product and told Lender-1, in sum and substance, that he preferred GigaTrust's platform over the platform of other IT providers. After CHANDRA's call with Lender-1, CHANDRA and ROBERT BERNARDI, the defendant,

discussed paying CHANDRA a \$50,000 bonus, with CHANDRA outlining a proposed payment schedule.

16. On or about July 30, 2019, Lender-1 requested additional bank account information from GigaTrust. After that request, ROBERT BERNARDI and NIHAT CARDAK, the defendants, agreed to alter bank statements to send to Lender-1, which BERNARDI transmitted on or about July 31, 2019. The altered bank statements overstated GigaTrust's cash deposits by approximately \$35 million. In the same email chain where CARDAK and BERNARDI discussed altering these bank statements, BERNARDI also agreed to pay CARDAK a \$200,000 bonus. On or about July 31, 2019, Lender-1 made a term loan of approximately \$25,000,000 to GigaTrust, and, in exchange, GigaTrust pledged shares of GigaTrust Stock to Lender-1 as part of a guaranty and security agreement entered the same day.

#### GigaTrust Files for Bankruptcy

17. On or about November 27, 2019, GigaTrust filed for Chapter 7 bankruptcy protection in the District of Delaware.

#### Statutory Allegations

18. From at least in or about 2016 through at least in or about 2019, in the Southern District of New York and elsewhere, ROBERT BERNARDI and NIHAT CARDAK, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate and agree together and with each other to commit an offense against the United States, to wit, securities fraud, in

violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

19. It was a part and object of the conspiracy that ROBERT BERNARDI and NIHAT CARDAK, the defendants, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

Overt Acts

20. In furtherance of the conspiracy and to effect its illegal object, the following overt acts, among others, were



committed in the Southern District of New York and elsewhere:

a. In or about September 2018, ROBERT BERNARDI, the defendant, met with a potential investor in New York, New York to discuss a potential investment in GigaTrust.

b. In or about December 2018, BERNARDI emailed a potential investor in New York a fabricated audit report purporting to audit GigaTrust's financial statements.

c. In or about May 2019, BERNARDI and NIHAT CARDAK, the defendant, created a forged a letter that purported to be from GigaTrust's New York attorneys and emailed it to a potential investor.

(Title 18, United States Code, Section 371.)

**COUNT TWO**

**(Conspiracy to Commit Bank Fraud)**

The Grand Jury further charges:

21. The allegations contained in paragraphs 1 through 17, and 20, are repeated and realleged as though fully set forth herein.

22. From at least in or about 2016 through at least in or about 2019, in the Southern District of New York and elsewhere, ROBERT BERNARDI and NIHAT CARDAK, the defendants, and others known and unknown, willfully and knowingly, did combine, conspire, confederate, and agree together and with each other to commit bank fraud, in violation of Title 18, United States Code, Section 1344.

23. It was a part and an object of the conspiracy that ROBERT BERNARDI and NIHAT CARDAK, the defendants, and others known and unknown, and others known and unknown, willfully and knowingly, would and did execute a scheme and artifice to defraud financial institutions, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, such financial institutions, by means of false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344.

(Title 18, United States Code, Section 1349.)

**COUNT THREE**

**(Conspiracy to Commit Wire Fraud)**

The Grand Jury further charges:

24. The allegations contained in paragraphs 1 through 17, and 20, are repeated and realleged as though fully set forth herein.

25. From at least in or about 2016 through at least in or about 2019, in the Southern District of New York and elsewhere, ROBERT BERNARDI, NIHAT CARDAK, and SUNIL CHANDRA, the defendants, and others known and unknown, willfully and knowingly, did combine, conspire, confederate, and agree together and with each other to

commit wire fraud, in violation of Title 18, United States Code, Section 1343.

26. It was a part and an object of the conspiracy that ROBERT BERNARDI, NIHAT CARDAK, and SUNIL CHANDRA, the defendants, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, which would and did affect a financial institution, in violation of Title 18, United States Code, Section 1343.

(Title 18, United States Code, Section 1349.)

**COUNT FOUR**

**(Aggravated Identity Theft)**

The Grand Jury further charges:

27. The allegations contained in paragraphs 1 through 17, and 20, are repeated and realleged as though fully set forth herein.

28. In or about 2019, in the Southern District of New York and elsewhere, ROBERT BERNARDI and NIHAT CARDAK, the defendants, knowingly did transfer, possess, and use, without lawful

authority, a means of identification of another person, during and in relation to a felony violation enumerated in Title 18, United States Code, Section 1028A(c), to wit, BERNARDI and CARDAK possessed and used the names and identities of Law Firm Partner-1 and Audit Partner-1 to induce potential investors to invest money into GigaTrust, during and in relation to the wire fraud conspiracy and bank fraud conspiracy charged in Counts Two and Three of this Indictment.

(Title 18, United States Code, Sections 1028A(a)(1), 1028A(b) and 2.)

**COUNT FIVE**

**(Aggravated Identity Theft)**

The Grand Jury further charges:

29. The allegations contained in paragraphs 1 through 17, and 20, are repeated and realleged as though fully set forth herein.

30. In or about 2019, in the Southern District of New York and elsewhere, ROBERT BERNARDI, NIHAT CARDAK, and SUNIL CHANDRA, the defendants, knowingly did transfer, possess, and use, without lawful authority, a means of identification of another person, during and in relation to a felony violation enumerated in Title 18, United States Code, Section 1028A(c), to wit, BERNARDI, CARDAK, and CHANDRA possessed and used the names and identity of Customer-1 to induce a potential investor to invest money into

GigaTrust, during and in relation to the wire fraud conspiracy charged in Count Three of this Indictment.

(Title 18, United States Code, Sections 1028A(a)(1), 1028A(b) and 2.)

**FORFEITURE ALLEGATION**

31. As a result of committing the offense alleged in Count One of this Indictment, ROBERT BERNARDI and NIHAT CARDAK, the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of said offense, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offense.

32. As a result of committing one or more of the foregoing wire and bank fraud offenses alleged in Counts Two through Three of this Indictment, ROBERT BERNARDI and NIHAT CARDAK, the defendants, and as a result of committing the foregoing wire fraud offense alleged in Count Three of this Indictment, SUNIL CHANDRA, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, 982(a)(2)(A), any and all property constituting, or derived from, proceeds the defendants obtained directly or indirectly, as a result of the commission of said offense, including but not limited to a sum of money in United

States currency representing the amount of proceeds traceable to the commission of said offense.

Substitute Asset Provision

33. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

- 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 divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property.

(Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(2)(A); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461.)



DAMIAN WILLIAMS  
United States Attorney

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.

ROBERT BERNARDI,  
NIHAT CARDAK,  
and  
SUNIL CHANDRA,

Defendants.

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SEALED INDICTMENT

21 Cr.

(18 U.S.C. § 2, 371, 1028A, 1343,  
1344, 1349;  
15 U.S.C. §§ 78j(b) & 78ff;  
17 CFR §§ 240.10b-5.)

DAMIAN WILLIAMS

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