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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,  <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> DOLORES LOVIN (5); MARY ARONSON (6); PHILIP JAMES BIDWELL (12); RICHARD EDWARD KOCH (11); JEFFREY A. LIGHT (14); TRACY O'NEAL TYLER (15); PETER P. BRAGANSA (16),  <p style="text-align: right;">Defendants.</p>	
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CASE NO. 07cr2016-IEG  
Order Construing Brief as Motion to Dismiss; Requiring Government to Show Cause

Defendant Jeffrey Light has filed a status report regarding his forensic expert's examination of the original two AffPower servers which the government obtained from Cyprus in 2007. Throughout the proceedings in this case, government counsel has unequivocally represented that the AffPower servers were wiped clean by the servicer who maintained those servers in Cyprus before they came into the government's possession. Government counsel unequivocally represented the servers were blank, or contained only useless data. Based upon these representations, the Court denied defense counsel's requests to have the original data produced prior to the first trial. Furthermore, the Court permitted the government to introduce summary exhibits at the first trial, created from the data which Mr. Appleyard copied from the Affpower servers, based upon the government's representations the original data was not available for inspection.


1 Current government counsel recently granted Defendant Light's computer expert access to  
2 the servers to conduct a forensic examination. The defense expert has written a report, dated  
3 January 11, 2010, stating that most if not all of the data still resides on one group of six drives,  
4 including order numbers, email addresses, physical addresses, etc, such that it is clear the drives  
5 were not "wiped clean." Furthermore, as to a second group of 14 drives, defendant's expert opines  
6 that a great deal, if not all the data, still resides on the drives, and could very possibly be read and  
7 translated with the proper programming. Finally, defendant's expert indicates there exists on the  
8 drives a forensic report regarding examination of the servers.

9 This new information, coupled with the government counsel's disclosure on November 10,  
10 2009, of 386,506 new transactions which were discovered but not disclosed to counsel or the  
11 Court during the course of the first trial, raises serious questions regarding the reliability and  
12 authenticity of the evidence the government has used to prosecute this case. Furthermore, these  
13 recent disclosures raise questions regarding the reliability and candor of the government's  
14 representations regarding its compliance with discovery obligations.

15 Therefore, the Court construes Defendant Light's report as a motion to dismiss. The  
16 government is hereby ordered to show cause why this case should not be dismissed for failure to  
17 comply with discovery obligations, for failure to disclose the existence of the numerous additional  
18 transactions which were discovered during the first trial, and for misrepresenting that the original  
19 data on the Cyprus servers no longer exists because the servers were wiped clean before they came  
20 into the government's possession. The government is ordered to file a written response, with  
21 supporting declarations as appropriate, on or before *January 20, 2010*. Defense counsel may file a  
22 reply on or before *January 22, 2010*. A hearing will be held before Chief Judge Irma E. Gonzalez  
23 on Wednesday, January 27, 2010, at 9:00 a.m.

24 **IT IS SO ORDERED.**

25 **DATED: January 13, 2010**

26   
27 **IRMA E. GONZALEZ, Chief Judge**  
28 **United States District Court**