

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW SCHWIER,

Defendant.

Case No. 3:17-cr-95-SLG-DMS

**ORDER GRANTING MOTION TO DISMISS COUNTS 1 AND 2 AND
REGULATE PRODUCED DISCOVERY**

The Court, having considered the government's Motion to Dismiss Counts 1 and 2 and Regulate Produced Discovery, the defendant's response at Docket 312, and pursuant to Federal Rules of Criminal Procedure 48 and 16(d), ORDERS that:

1. Count 1 and Count 2 of the Fourth Superseding Indictment at Docket 279 are dismissed without prejudice¹;
2. By **February 7, 2020**, the defense shall file a certification that Mr. Herz and Mr. Fischbach:
 - a. have deleted, and will not access in the future, the Torrential

¹ See *United States v. Hayden*, 860 F.2d 1483, 1487 (9th Cir. 1988) ("If the district court finds that the prosecutor is acting in good faith in making its Rule 48(a) motion [to dismiss without prejudice], it should grant the motion; conversely, Rule 48(a) empowers the district court to exercise its discretion in denying the motion when it specifically determines that the government is acting in bad faith."). The Court finds the government is acting in good faith in seeking the dismissal of the two TD counts. "[W]hen the government requests a Rule 48(a) dismissal in good faith, the district court is duty bound to honor the request." *Id.* at 1488.

Downpour manual produced in discovery, and sealed Dockets 299 and 300; and

- b. will not access in the future the virtual machines the government produced to the defense at the Orange County Regional Computer Forensic Laboratory (OCRCFL), pursuant to the Order at Docket 231, and referred to by the defense at docket 297.

DATED this 31st day of January, 2020 at Anchorage, Alaska.

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE