Forensic examination of certain items produced in discovery in the Southern District of New York has established that the database for the Silk Road Forum (hereinafter "SR Forum") – in both its original incarnation as well as copies seized by the government – was tampered with in order to delete communications and other information related to a person – with the username "notwonderful," and who operated an SR account under the name "albertpacino" – who contacted DPR on the SR Forum, sold him information about the federal law enforcement investigation of SR and DPR, and was paid regularly for updates regarding the progress of the investigation.[1]

Indeed, as the government informed the Court (and subsequently the defense in the SDNY prosecution) in a November 21, 2014, letter, another SR account operated by former SA Force (in addition to his authorized DEA undercover account using the name "nob," and an unauthorized account using the name "french maid") may have been in the name of "alpacino" (or "albertpacino" or "pacino"). *Id*., at 3.[2]

Regarding the "alpacino" accounts, the government's letter, at 3 (footnote omitted), stated that

> [t]he communications purport to be from someone claiming to be "in the perfect spot to play spy for Silk Road with the DEA." Like the correspondence from "french maid," these communications reflect inside knowledge of USAO-Baltimore's investigation of Silk Road. Further evidence indicates that Ulbricht paid "alpacino" a salary of $500 per week to supply such information. Accordingly, USAO-San Francisco is investigating whether SA Force controlled this username as well and exploited it to exchange investigative information to Ulbricht for payment in Bitcoins.

Id.

The SR Forum database was resident on a server distinct from the SR marketplace (hereinafter "SR main site," which is how it was referred to by many who posted on the SR Forum). There were four items in the discovery produced in the SDNY case on which one would expect the SR Forum database to be in its entirety as of the dates of those items' seizure (and/or

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[1] Thus, "notwonderful" and "albertpacino" are the same person(s). The former is the username used in the communications with DPR, and the latter is the account name on SR that was used as a repository of payments from DPR.

[2] A copy of that letter (unsealed March 30, 2015, [Docket #226]) is attached hereto for your convenience as Exhibit 1.

imaging) by law enforcement.[3]

For example, Item #2 (as enumerated in the discovery) is an image of the server used to store backups of the SR Forum database and other SR data. Pursuant to warrant dated September 9, 2013, this image was created by personnel at J-Tan.com (hereinafter "J-Tan"), the company maintaining the server, and later produced it to the government. Not surprisingly, the "modified date" for the SR Forum database backup file on this image is September 9, 2013, the expected date because the SR Forum's host server was programmed to update the file every few hours.

Similarly, Item #3 is an image of the same server, but it was created by government personnel who, pursuant to a warrant, physically entered the premises of Windstream Communications (hereinafter "Windstream"), the data center housing the server, and created the image while leaving the server intact and running. The only difference appears to be that it is an incomplete copy containing only a few subdirectories. However, it does include the subdirectory in which the SR Forum backup file was stored. The modified date for the SR Forum backup file in Item #3 is September 8, 2013.

Item #5 is another image of the same server, but created after it was physically seized by the government October 2, 2013, the day after the SR main site was taken down by law enforcement, and on which Mr. Ulbricht was arrested (October 1, 2013). The SR Forum backup file on Item #5 has a modified date of October 2, 2013, again indicating that the backup script had been updating the backup on an hourly basis right up until law enforcement removed it from the system.

However, the three copies of the backup file for the SR Forum, in Item #2, Item #3, and Item #5, imaged on three different dates, and showing modified dates corresponding to those dates, *do not* contain complete data sets for the SR Forum. Instead, each presents the same inexplicable anomaly: they do not contain *any* SR Forum data after July 22, 2013. Thus, *none* of these files include all of the data they are supposed to contain. Rather, the SR Forum data after July 22, 2013, has been wiped clean from each.

The fourth discovery item in which the SR Forum database would be expected to be found, Item #16, is an image of the server that was hosting the SR Forum on the TOR network.[4] That was the server that was automatically updating the backup file of the SR Forum database on the J-Tan server every few hours. The live SR Forum database on this host server appears at first blush to contain *all* of the data that should be on it – posts, messages, accounts, etc. – from the inception of the SR Forum, June 18, 2011, through November 22, 2013, when the government

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[3] "Imaging" is a technique through which data stored on a server (or other digital storage device) is copied sequentially to another storage medium, such as a portable hard drive.

[4] TOR stands for "The Onion Router," that part of the internet on which IP addresses are anonymized. *See* https://www.torproject.org/.

seized it and took it offline.

Yet, while Item #16 includes the full date range of the SR Forum database, it still does *not* contain *any* of the communications between DPR and "notwonderful" – many of which occurred between July 26, 2013, and August 15, 2013. In fact, the dialogue between DPR and "notwonderful" cannot be found *anywhere* in any of these four locations, *i.e.,* the live SR Forum database (Item #16) and the automated backup copies (Items #2, #3 & #5).

However, a portion of that dialogue between DPR and "notwonderful" can indeed be found on yet another backup copy of the SR Forum database that was stored in a location in which one would not expect it to be found. This copy appears to have been created manually by an SR user with administrative privileges named "s," perhaps "Smedley," on the host server and is saved in a subdirectory of his home folder on the server.[5]

Unlike the other four copies discussed above, that copy in the subdirectory has *not* been tampered with, and contains communications between DPR and "notwonderful" through August 15, 2013 (the date "s" created the copy).[6]

The implications of the missing SR Forum server data are that at the very least the deletions establish that someone with access to the previously mentioned servers and images created from them (prior to their production in discovery) eliminated any evidence of the communications between "notwonderful" and DPR – surgically with respect to the live host SR Forum server, and categorically with respect to the images of the backup server.

However, because "s" had created a working copy August 15, 2013, at least some of those communications – between their inception July 26, 2013, and August 15, 2013 – have been preserved. Thus, whoever deleted the data from Items #2, #3, #5 & #16 missed that unidentified copy in the non-descript "s" subdirectory, and consequently failed to eliminate all evidence of those communications.[7]

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[5] The most plausible explanation is that in the course of performing some maintenance or other administrative function with respect to the SR Forum, Smedley created a copy either to do that work, or as a back-up in the event of some mishap while attending to the live server database.

[6] Some of these communications were initially encrypted, but could be de-crypted using an encryption key found in another part of the discovery.

[7] In addition, some of the dialogue between "notwonderful" and DPR is captured in the "le_counter_intel.txt" file recovered from Mr. Ulbricht's laptop computer. That file was marked as DX C at the SDNY trial. However, the person(s) who deleted the data from the SR Forum Server (and copies) likely either was unaware of the "le_counter_intel.txt" file or did not have access to the image of Mr. Ulbricht's laptop (to delete the le_counter_intel file).

A mere three days after the government gained access to the SR Servers overseas July 23, 2013, DPR was contacted July 26, 2013, on the SR Forum private messaging system by someone with the username "notwonderful." The allusion to "wonderful" had meaning for SR, and for DPR, as during the previous month, June 2013, there had been concern that a particular SR Forum user, "mr.wonderful," was, in fact, an undercover law enforcement operative.

A July 12, 2013, SR Forum message from DPR, admitted as GX 126A at the SDNY trial,[8] introduced "cirrus" as a new forum moderator. The message notes that "cirrus" was formerly known as "scout," and refers to the earlier fear that "scout" had been compromised by Mr. Wonderful, who was suspected of being a law enforcement undercover agent seeking to infiltrate SR and recruit cooperators against the site and DPR. A copy of GX 126A is attached hereto as Exhibit 4.

"Notwonderful" told DPR he could provide real-time information and analysis regarding the federal investigation of SR and DPR, and in fact provided information consistent with what was occurring at the time in the federal investigation. Some of the communications between "notwonderful" and DPR were included in the "le_counter_intel.txt" file recovered from Mr. Ulbricht's laptop computer.

Also on July 26, 2013, "notwonderful" asked DPR to make an initial payment to him of $5,000 or $8,000, and $500 per week for updates. *Id*., at 6.[9] In order to facilitate payment, "notwonderful" created July 26, 2013, on the SR main site, an account in the name of "albertpacino." *Id*., at 6 ("I made an account on your main site: "albertpacino").

The initial payment was made by DPR that day (by crediting the "albertpacino" account), with the weekly payments following (via the same method). The final payment (for $500) reflected in the "albertpacino" account on SR was made by DPR September 26, 2013.

The existence of the manually created "s" backup copy of the SR Forum server database in the "s" subdirectory (in Item #16) establishes indisputably that certain data – including most importantly the communications between "notwonderful" and DPR – were missing from the other images of the SR Forum database – back-up copies (in Items #2, #3 & #5) as well as the "live" database (Item #16) – produced in discovery.

The selective deletion of the communications between "notwonderful" and DPR from the live SR Forum database strongly indicates that such surgical excision was performed by "notwonderful" in an effort specifically to cover his/her tracks and eliminate all evidence of those

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[8] Unless otherwise noted, all exhibits referred to herein are from Mr. Ulbricht's SDNY trial.

[9] This modest initial payment and weekly stipend is in contrast to the significantly higher demands made by former SA Force in his incarnation as "Death From Above."

communications. That was most likely accomplished while the SR Forum was still operational prior to the government shuttering it November 22, 2013, because it would have been easier to perform such a precise deletion of the "notwonderful"-DPR dialogue from the live database – using the platform software running the web site – than from copies of the inert database backup file obtained from J-Tan and Windstream.

Also, there is compelling evidence that the person(s) who contacted DPR, and/or who subsequently attempted to delete all traces of those communications, was *not* either former SA Force or former SA Bridges, but was, indeed, connected to law enforcement and the investigation into SR and DPR.

As noted **ante**, while the government's November 21, 2013, letter (Exhibit 1) lists "albertpacino" as a possible alias (and account) utilized by former SA Force, the subsequent Criminal Complaint against former SA's Force and Bridges, filed four months later (March 30, 2015) does not mention "albertpacino" or "notwondeful" *at all*. *See United States v. Force*, 15 Cr. 319 (RS) (N.D.Cal.), Criminal Complaint (Docket #1).[10]

Nor do any subsequent (and extensive) government submissions in the case against former SA's Force and Bridges make any allegation that either former SA Force or former SA Bridges were responsible for the "notwonderful" or "albertpacino" account or communications. Indeed, "notwonderful" and/or "albertpacino" have disappeared from any discussion by the government with respect to corruption in the investigation of SR and DPR.

Also, the scope of the government's investigation of former SA's Force and Bridges included review of their electronic and digital devices and communications, as well as their Bitcoin accounts and transaction history. Yet that review did not uncover any link to "notwonderful" or "albertpacino."

In addition, former SA's Force and Bridges operated dramatically differently than "notwonderful." Former SA Force, as "Death From Above" and "french maid," made exorbitant demands for money in exchange for information. Former SA Bridges, as the government's submissions in his prosecution demonstrate, chose clandestine theft (as did former SA Force in some instances) from SR accounts as his means of illegal enrichment.

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[10] According to an article, Roger Thomas Clark, whom the U.S. alleges is "Variety Jones," an SR administrator, and is seeking to extradite from Thailand, "also repeated [in an interview] a previous claim to have knowledge about a so-far undiscovered dirty FBI agent – information that he said he's keeping 'under (his) hat' until the right opportunity presents itself." *See* Sam Cooley and Akbar Khan, "Our Thai Prison Interview with the alleged top advisor to Silk Road," *Ars Technica*, September 7, 2016, available at <http://arstechnica.com/tech-policy/2016/09/exclusive-our-thai-prison-interview-with-an-alleged-top-advisor-to-silk-road/>.

These findings are exculpatory because (1) they amplify Mr. Ulbricht's defense at trial that the digital evidence lacked integrity because the site's information and data was subject to manipulation; and (2) they support Mr. Ulbricht's defense at trial that DPR was purchasing information from law enforcement sources regarding the progress of the federal investigation, and that as a result DPR devised an exit strategy to escape and frame Mr. Ulbricht. In that regard, it is noteworthy that the SR Forum data – and therefore the communications between DPR and "notwonderful" (who was last paid September 26, 2013) – remain missing for the six critical weeks between August 15, 2013, and Mr. Ulbricht's October 1, 2013, arrest.