

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

JAY MICHAUD,

Defendant-Appellee.

NO. 16-30163

D.C. No. CR15-5351RJB
Western District of
Washington

**Motion of the United States for Voluntary
Dismissal of its Appeal**

The Plaintiff-Appellee, United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Helen J. Brunner, Assistant United States Attorney for said district hereby moves this Court, pursuant to Federal Rules of Appellant Procedure 27 and 42, Ninth Circuit Rule 27-9.1, for voluntary

dismissal of the appeal filed by the United States. This motion is based upon the attached declaration of counsel.

DATED this 23rd day of December, 2016.

Respectfully submitted,

ANNETTE L. HAYES
United States Attorney
Western District of Washington

s/ Helen J. Brunner
HELEN J. BRUNNER
First Assistant United States Attorney
700 Stewart Street, Suite 5220
Seattle, WA 98101
(206) 553-7970

DECLARATION

1. I am the Assistant United States Attorney for the Western District of Washington who has been assigned supervisory responsibility for appeals. In that capacity, I have personal knowledge of the facts stated herein and, if called as a witness, could and would testify competently under oath.

2. On June 23, 2016, the United States Attorney's Office for the Western District of Washington filed a protective Notice of Appeal to preserve the right of the United States to pursue an interlocutory appeal of the order of the district court granting the defense motion to compel and finding, as a remedy for the refusal to comply that the evidence of the Network Investigative Technique (NIT), the search warrant issued on the basis of that evidence and the fruits of that search should all be suppressed.

3. Upon further review within the Department of Justice or the Court's order and the record in the case, the United States has concluded that this appeal should not be pursued. It is for that reason

that the United States now respectfully requests that this appeal be dismissed.

DATED this 23rd day of December, 2016.

Respectfully submitted,

s/ Helen J. Brunner

HELEN J. BRUNNER

First Assistant United States Attorney

Western District of Washington

700 Stewart Street, Suite 5220

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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2016, I electronically filed the foregoing Motion of the United States for Voluntary Dismissal of its Appeal with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 23rd day of December, 2016.

/s/ Helen J. Brunner
HELEN J. BRUNNER
First Assistant United States Attorney