1		The Honorable Robert J. Bryan	
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7	UNITED STATES DISTRICT COURT FOR THE		
8	WESTERN DISTRICT OF WASHINGTON AT TACOMA		
9	ATTACOMA		
10	UNITED STATES OF AMERICA,	NO. CR15-5351RJB	
11	Plaintiff,		
12		GOVERNMENT'S UNOPPOSED MOTION TO DISMISS INDICTMENT	
13	V.	WITHOUT PREJUDICE	
14	JAY MICHAUD,		
15	Defendant.	Noting Date: March 17, 2017	
16			
17	I. INTRODU		
18	Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, the		
19	government moves to dismiss the indictment in th		
20	suppression order entered by the Court in May 20		
21	evidence needed to establish Defendant Jay Michaud's guilt beyond a reasonable doubt at		
22	trial. Because the government remains unwilling to disclose certain discovery related to		
23	the FBI's deployment of a "Network Investigative Technique" ("NIT") as part of its		
24	investigation into the Playpen child pornography site, the government has no choice but		
25	to seek dismissal of the indictment.		
26	The government fully and forcefully litigated the discovery issue that gave rise to		
27	the Court's suppression order. It has undertaken this litigation in good faith and in an		
28			

effort to balance the many competing interests that are at play when sensitive law
 enforcement technology becomes the subject of a request for criminal discovery. And
 dismissal without prejudice is therefore warranted. Counsel for the United States has
 conferred with counsel for the defendant, Colin Fieman, who has stated that Defendant
 does not oppose the government's request.

II. DISCUSSION

7 The Ninth Circuit has long held that Rule 48(a) requires dismissal without 8 prejudice "provided [the government] is not acting in bad faith." United States v. Hayden, 860 F.2d 1483, 1488 (9th Cir. 1988); see also United States v. W.R. Grace, 429 9 F. Supp. 2d 1207, 1247 (D. Mont. 2006) ("Dismissal under Rule 48(a) is without 10 prejudice unless the court finds that the dismissal is sought for some improper purpose."). 11 Indeed, a district court is "duty bound' to grant the government's Rule 48(a) motion to 12 dismiss an indictment without prejudice unless 'it specifically determines that the 13 government is operating in bad faith' in pursuing the motion. United States v. Mujahid, 14 15 491 F. App'x 859, 860 (9th Cir. 2012) (quoting Hayden, 860 F.2d at 1487).

The government must now choose between disclosure of classified information
and dismissal of its indictment. Disclosure is not currently an option. Dismissal without
prejudice leaves open the possibility that the government could bring new charges should
there come a time within the statute of limitations when and the government be in a
position to provide the requested discovery.

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Government's Unopposed Motion to Dismiss Indictment Without Prejudice - 2 United States v. Michaud CR15-5351RJB UNITED STATES ATTORNEY 700 Stewart Street, Suite 5220 Seattle, Washington 98101 (206) 553-7970

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The government has not sought unfair advantage over Michaud, nor has it acted
 with any improper motive. It simply acted to protect highly sensitive information from
 criminal discovery as was its obligation. The Court should therefore dismiss this case
 without prejudice.

DATED this 3rd day of March, 2017.

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6	Respectfully submitted,
7	Respectfully sublitted,
8	ANNETTE L. HAYES
9	United States Attorney
10	
11	/s/ Matthew P. Hampton
12	HELEN J. BRUNNER
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1	CERTIFICATE OF SERVICE		
2	I hereby certify that on March 3, 2017, I electronically filed the foregoing with the		
3	Clerk of the Court using the CM/ECF system which will send notification of such filing		
4	to the attorney(s) of record for the defendant.		
5			
6	s/Emily Miller		
7	EMILY MILLER		
8	Legal Assistant United States Attorney's Office		
9	700 Stewart Street, Suite 5220		
10	Seattle, Washington 98101-1271 Phone: (206) 553-2267		
11	FAX: (206) 553-0755		
12	E-mail: emily.miller@usdoj.gov		
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1		The Honorable Robert J. Bryan	
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7	UNITED STATES DISTRICT COURT FOR THE		
8	WESTERN DISTRICT OF WASHINGTON AT TACOMA		
9			
10	UNITED STATES OF AMERICA,	NO. CR15-5351 RJB	
11	Plaintiff,	ORDER DISMISSING INDICTMENT	
12		WITHOUT PREJUDICE	
13	V.		
14	JAY MICHAUD,		
15	Defendant.		
16			
17	The Court, having reviewed the government's unopposed motion to dismiss the		
18	indictment without prejudice, enters the following order:		
19 20	IT IS HEREBY ORDERED that the indictment in this case is dismissed without		
20	prejudice.	2015	
21 22	DATED this day of	_, 2017.	
22			
23 24	-	ROBERT J. BRYAN	
24		United States District Judge	
23 26	Presented by:		
20	s/ Matthew P. Hampton		
28	MATTHEW P. HAMPTON Assistant United States Attorney		
	ORDER DISMISSING INDICTMENT WITHOUT PREJUDICE - 1 United States v. Michaud, CR15-5351 RJB United States v. Michaud, CR15-700 REPUBLICE - 1 (206) 553-7970		