

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Case No. 14-cr-00398-WJM

UNITED STATES OF AMERICA,

Plaintiff,

v.

BURTON WAGNER,

Defendant.

**UNITED STATES MOTION TO DISMISS THE INDICTMENT
WITHOUT PREJUDICE**

The United States, through United States Attorney John F. Walsh and the undersigned Assistant United States Attorney, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and an Agreement executed by the parties on July 9, 2015, hereby respectfully moves the Court to enter an Order dismissing without prejudice the Indictment as to Defendant Burton Wagner.

Rule 48(a) requires leave of court for dismissal of an indictment or information by the United States Attorney. The government should only dismiss without prejudice when there is good cause and for a reason that does not offend the public interest. See Rinaldi v. United States, 434 U.S. 22 (1977); United States v. Gonzalez, 58 F.3d 459 (9th Cir. 1995); United States v. Strayer, 846 F.2d 1262 (10th Cir. 1988); United States v. Derr, 726 F.2d 617 (10th Cir. 1984); United States v. Hamm, 659 F.2d 624 (5th Cir.1981)(and cases therein).

In support of this motion, the United States incorporates by reference the Agreement, including its Exhibits A, B, and C, which are filed separately under restriction at document number 36. Such Agreement establishes that this motion is not filed for any improper purpose, and that the Defendant consents to the dismissal without prejudice.

Respectfully submitted this 13th day of July, 2015.

JOHN F. WALSH
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DISTRICT OF COLORADO
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 13, 2015, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing to the following individuals:

All counsel of record

s/ Michele R. Korver
MICHELE R. KORVER
Assistant United States Attorney