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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TODD C. ENGEL,

Defendant.

2:16-CR-00046-GMN-PAL

**GOVERNMENT'S MOTION TO
DISMISS, WITHOUT PREJUDICE,
COUNTS ONE, TWO, FIVE, SIX,
EIGHT, NINE, FOURTEEN AND
FIFTEEN OF THE SUPERSEDING
INDICTMENT AS TO DEFENDANT
TODD C. ENGEL**

CERTIFICATION: This motion is timely filed.

The United States, by and through the undersigned, respectfully seeks leave under Fed. R. Crim. P. 48(a) to dismiss, without prejudice, Counts One, Two, Five, Six, Eight, Nine, Fourteen and Fifteen of the Superseding Indictment as to defendant Todd C. Engel (hereinafter "Engel"). As explained further in its supporting Memorandum, the government seeks this dismissal solely to save the

1 Court and the government the time and expense of a second trial, verdicts of guilty
2 having been entered on two of the ten counts against Engel. Accordingly, dismissal
3 without prejudice is appropriate.

4 MEMORANDUM

5 **A. Background**

6 On February 6, 2017, the Court commenced a joint jury trial of defendant
7 Engel and five other co-defendants¹ on ten counts of a Superseding Indictment
8 (“Indictment”) (ECF No. 27), all of the counts arising from allegations that Engel
9 participated as a gunman in a massive armed assault against federal law
10 enforcement officers on April 12, 2014. Specifically, the Indictment charged Engel
11 with: Conspiracy to Commit an Offense Against the United States (Count 1; 18
12 U.S.C. § 371); Conspiracy to Impede or Injure a Federal Officer (Count 2; 18 U.S.C.
13 § 372); Assault on a Federal Officer (Count 5; 18 U.S.C. §§ 111(a)(1),(b) and 2); Use
14 and Carry of a Firearm in Relation to a Crime of Violence (Counts 6, 9, and 15; 18
15 U.S.C. §§ 924(c) and 2); Threatening a Federal Law Enforcement Officer (Count 8,
16 18 U.S.C. §§ 115(a)(1)(B) and 2); Obstruction of the Due Administration of Justice
17 (Count 12; 18 U.S.C. §§ 1503 and 2); Interference with Interstate Commerce by
18 Extortion (Count 14, 18 U.S.C. §§ 1951 and 2); and, Interstate Travel in Aid of
19 Extortion (Count 16, 18 U.S.C. §§ 1952 and 2).

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23 ¹ Eric Parker, O. Scott Drexler, Steven Stewart, Ricky R. Lovelien, and Gregory Burleson.

1 On April 13, 2017, and after receiving the evidence and instructions on the
2 law, the jury began deliberations. After several days, and on April 24, 2017, the
3 jury returned guilty verdicts as to Engel on Count Twelve (Obstruction of Justice)
4 and Count Sixteen (Interstate Travel in Aid of Extortion), but announced that they
5 were deadlocked on Counts One, Two, Five, Six, Eight, Nine, Fourteen and Fifteen
6 (hereinafter referred to as the “deadlocked counts”). After declaring a mistrial on
7 the deadlocked counts as to Engel, the Court ordered that the re-trial of those counts
8 commence on June 26, 2017. The government now seeks to dismiss the deadlocked
9 counts as to defendant Engel.

10 **B. Discussion.**

11 Rule 48(a) of the Federal Rules of Criminal Procedure provides:

12 The government may, with leave of court, dismiss an indictment,
13 information, or complaint. The government may not dismiss the prosecution
14 during trial without the defendant's consent.

15 The government's power to dismiss under Rule 48(a) extends to individual counts
16 in an indictment. *In re United States*, 345 F.3d 450, 452 (7th Cir. 2003); *United*
17 *States v. Delagarza*, 650 F.2d 1166, 1167 (10th Cir.1981); 3B Charles Alan Wright,
18 *Federal Practice and Procedure* § 811 (3d ed. 2004).

19 “Customarily, Rule 48(a) dismissals are without prejudice and permit the
20 government to re-indict within the statute of limitations.” *United States v. Raineri*,
21 42 F.3d 36, 43 (1st Cir. 1994); see also *United States v. Ortega-Alvarez*, 506 F.2d
22 455, 458 (2d Cir. 1974) (collecting cases and holding Rule 48(a) dismissal “is without
23 prejudice to the government's right to reindict for the same offense, unless contrary
24

1 is expressly stated.”). Further, consent to dismissal by the defendant is not required
2 when the motion is made before trial even when the case has already been tried and
3 a new trial has been ordered. *See United States v. Friedman*, 107 F.R.D. 736, 739-
4 741 (N.D. Ohio 1985) (no consent required for Rule 48(a) dismissal after defendant
5 obtained post-conviction relief under 28 U.S.C. § 2255).

6 The government seeks dismissal here simply as a matter of judicial economy.
7 A jury has returned guilty verdicts as to Engel on Counts Twelve and Sixteen of the
8 Superseding Indictment, making it impractical to re-try him on the deadlocked
9 counts at this time, the incremental value of pursuing a conviction on those counts
10 being outweighed by the potential cost of time and money to both the government
11 and the Court.

12 The government nonetheless has a right to seek a superseding indictment
13 following a mistrial caused by the jury’s failure to reach a unanimous verdict.
14 *United States v. Flores-Perez*, 646 F.3d 667, 669 (9th Cir. 2011) (*citing Richardson*
15 *v. United States*, 468 U.S. 317, 326 (1984)) (holding that double jeopardy clause is
16 not implicated when the government supersedes an indictment following a mistrial
17 due to a hung jury). Thus, while the government does not intend to proceed with a
18 second trial on the deadlocked counts at this time, it nonetheless expressly reserves
19 its right to seek a superseding indictment if this Court (or, the Ninth Circuit)
20 reverses or vacates the verdicts on the two extant counts of conviction. In that
21 unlikely event, the government will seek to retry the deadlocked counts *together*
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CERTIFICATE OF SERVICE

I certify that I am an employee of the United States Attorney's Office. A copy of the foregoing **GOVERNMENT'S MOTION TO DISMISS, WITHOUT PREJUDICE, COUNTS ONE, TWO, FIVE, SIX, EIGHT, NINE, FOURTEEN AND FIFTEEN OF THE SUPERSEDING INDICTMENT AS TO DEFENDANT TODD C. ENGEL** was served upon counsel of record, via Electronic Case Filing (ECF).

DATED this 16th day of May, 2017.

/s/ Steven W. Myhre

STEVEN W. MYHRE
Acting United States Attorney

EXHIBIT 1

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

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v.

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PROPOSED ORDER

This matter coming before the Court on the government's Motion to Dismiss, Without Prejudice, Counts One, Two, Five, Six, Eight, Nine, Fourteen, and Fifteen of the Superseding Indictment as to defendant Engel, the premises therein having been considered, and good cause showing, the government's Motion is hereby **GRANTED**.

IT IS HEREBY ORDERED that Counts One, Two, Five, Six, Eight, Nine, Fourteen, and Fifteen of the Superseding Indictment shall be, and are, **DISMISSED** without prejudice, as to defendant Engel.

IT IS FUTHER ORDERED that the trial date of June 26, 2017, is hereby **VACATED** as to defendant Engel.

DATED this ____ day of May, 2017.

Gloria M. Navarro, Chief Judge
United States District Court