

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WASHINGTON

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4
5 UNITED STATES OF AMERICA,
6 Plaintiff,

7 v.

8
9 RHONDA FIRESTACK-HARVEY, LARRY
10 HARVEY, MICHELLE GREGG, ROLLAND
11 GREGG, and JASON ZUCKER,
12 Defendants.

No. CR-13-24-FVS

ORDER DENYING JASON
ZUCKER'S REQUEST FOR AN
ORDER PRECLUDING THE
UNITED STATES FROM FILING
AN INFORMATION UNDER 21
U.S.C. § 851(a)

13 **THE DEFENDANTS** have filed a number of motions. The Court
14 considered their motions at a pretrial conference that was held on
15 April 22 and 23, 2014. This order addresses defendant Jason Zucker's
16 request for an order precluding the United States from filing an
17 information under 21 U.S.C. § 851(a).

18 **BACKGROUND**

19 On February 6, 2013, a grand jury returned an Indictment charging
20 the defendants with violations of the Controlled Substances Act, 21
21 U.S.C. § 801 *et seq.* Counsel for Jason Zucker and counsel for the
22 United States have discussed the possibility of resolving the charges
23 against Mr. Zucker by means of a plea agreement. Mr. Zucker and the
24 United States have been unable to agree upon mutually acceptable
25 terms. Mr. Zucker alleges the United States has threatened to file an
26 information under 21 U.S.C. § 851(a) in the event he refuses to plead

1 guilty upon terms that are acceptable to the United States. Mr.
2 Zucker alleges the United States' threat amounts to prosecutorial
3 vindictiveness. He moves for an order precluding the United States
4 from filing an 851(a) information.

5 **RULING**

6 During plea negotiations, a prosecutor "may threaten additional
7 charges and may carry through on this threat. . . . This action
8 alone does not violate a defendant's due process rights, nor does it
9 create a presumption of vindictiveness." *United States v. Noushfar*,
10 78 F.3d 1442, 1446 (9th Cir.1996). The Ninth Circuit has repeatedly
11 declined to limit prosecutorial discretion in the manner suggested by
12 Mr. Zucker. See, e.g., *United States v. Kent*, 649 F.3d 906, 912-14
13 (9th Cir.2011) ("a prosecutor who carries out a plea bargaining threat
14 to enhance charges against a defendant, despite the defendant's
15 willingness to plead guilty unconditionally, [does not] act[] with
16 impermissible vindictiveness"). Consequently, the Court must deny Mr.
17 Zucker's motion for an order precluding the United States from filing
18 an 851(a) information.

19 **IT IS HEREBY ORDERED:**

20 Jason Zucker's "Motion to Dismiss Enhancement on Grounds of
21 Vindictive Prosecution" (ECF No. 269) is **denied**.

22 **IT IS SO ORDERED.** The District Court Executive is hereby
23 directed to enter this order and furnish copies to counsel.

24 **DATED** this 30th day of April, 2014.

25
26 s/Fred Van Sickle
Fred Van Sickle
Senior United States District Judge