

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No.: 11-80205-CR-MARRA

UNITED STATES OF AMERICA,

Vs.

MITCHELL J. STEIN,
Defendant.

FIRST AMENDED ADDENDUM TO DEFENDANT’S MOTIONS FOR NEW TRIAL

CHRONOLOGY OF GIGLIO/BRADY AND OTHER VIOLATIONS

The following chart is provided for the court’s convenience to chronicle what the Defense argues was the prosecutorial and witness misconduct at trial, but only such misconduct uncovered to date¹:

No.	Type of Violation	The Testimony/Misstatement	The Truth
1.	<p><u>Giglio misstatement to the jury:</u> Mr. Tribou’s name does not appear on the CHM purchase order – Govt. Exhs. 64, 300. (By Prosecution.)</p>	<p>PROSECUTOR “First and most obviously, if Tom Tribou, Thomas Tribou, is Cardiac Hospital Management, where’s Tom Tribou’s name, Thomas Tribou’s name? Does it say sold to Thomas Tribou? It doesn’t, ladies and gentlemen. Take a look closely. I apologize. I know this is small on the screen, but take a look on Government’s exhibit 64. See if Thomas Tribou’s name appears on there.” Closing, Trial Tr. Vol. 10 at 114.</p>	<p>Mr. Tribou testified before the SEC that he signed the CHM purchase order, and Mr. Tribou produced the CHM purchase order he signed to the SEC – the very purchase order the Prosecution referred to throughout the trial and in closing. Q “But you recall that Cardiac Hospital Management is the same name that’s listed on the purchase order -” TRIBOU: “That’s what I saw on the purchase order, yeah.” Q “That you signed?” TRIBOU: “Yeah.” See Exhs. A (Tribou testimony) and P (purchase order produced by Tribou) to the Decl. of Reichardt.</p>

¹ All new additions to the chart represented by the first amended addendum are highlighted in yellow, for the Court’s convenience.

No.	Type of Violation	The Testimony/Misstatement	The Truth
2.	<p><u>Giglio misstatement to the Court:</u> Mr. Tribou will deny he has anything to do with Cardiac Hospital Management. (By Prosecution.)</p>	<p>PROSECUTOR to Court: "Your Honor, we were able to reach Mr. Tribou. He interestingly is [] skeptical that that could be his handwriting with this number that Mr. Stein is suggesting he wants in evidence." Trial Tr. Vol. 9 at 54. [] "[Tribou] will deny unequivocally that he has anything to do with Cardiac Hospital Management []." <i>Id.</i> at 41.</p>	<p>Tribou testified before the SEC: Q "But you recall that <u>Cardiac Hospital Management</u> is the same name that's listed on the purchase order -" TRIBOU: "<u>That's what I saw on the purchase order, yeah.</u>" Q "<u>That you signed?</u>" TRIBOU: "<u>Yeah.</u>" [...] Ex. A to Decl. of Reichardt.</p>
3.	<p><u>Giglio misstatement to the jury:</u> Mr. Tribou has nothing to do with Cardiac Hospital Management. (By Prosecution.)</p>	<p>PROSECUTOR: "If Cardiac Hospital Management was a real company, if Tom Tribou is really Cardiac Hospital Management, why is Mr. Stein making up names?" Closing, Trial Tr. Vol 10 at 118.</p>	<p>TRIBOU: "Lowell talked to me that night, when we went become to the hotel, and told me about the leads that he had and everything. He said what we could do is probably put something in terms. So I end up getting, say, two million rounded off, two million dollars' of stuff, <u>1.9 something, for \$50,000 down.</u>" Ex. A to Decl. of Reichardt. Dr. Harmison also doesn't deny the validity of the purchase order before the SEC.²</p>

² Dr. Lowell Harmison – former Principal Deputy of the Food and Drug Administration, and signator on the purchase orders – testified before the SEC that the purchase orders were real. E.g.: Q As of December 27th, 2007, the date of this e-mail, did you view the purchase order that Tom Tribou signed as still in effect or still enforceable? HARMISON: Yes. Q As of this date, did you expect that Tom Tribou was going to receive 180 units and in return pay the company point some million dollars? HARMISON: Yes, because his reputation was his contacts and the hospitals and clinics was now on the line to – to deliver products that he told them about. So there was ever -- not any reason to question his sincerity in doing this. Q Well, I believe earlier you testified at some point, you know, he backed away and said – HARMISON: It was -- that some point being, in my judgment, I gave him the lure at the end of December, the end of the year. That moving away occurred in January, February time frame. Q And what happened between this e-mail in December 27th and the January, February time period? HARMISON: He still wasn't receiving his devices.[...] 4/16/10 SEC Tr. at 400. Ex. Q to the Dec. of Reichardt. HARMISON: There was an effort to get the production straightened out, to meet the conditions, to meet – to provide units under that purchase order that met the full requirements of what was sold to him or purchased by him. *Id.* at 340. HARMISON : It's a change of address and Tribou and TZ and -- was trying to establish an external international linkage. They had one person that was assigned to doing that. I don't remember his name, but this is just a statement that it was done. *Id.* at 408. HARMISON: Well, the -- it was a -- an agreement that addressed whether devices would be provided to TZ Medical or any subunit of TZ Medical because he wanted to keep things separate from his -- his company. So I think they had a separate organizational entity. So issues regarding what were plausible terms and they were converted to a purchase-order-type delineation of things to which Tribou signed and I signed. *Id.* at 305. Ex. Q to Decl. of Reichardt.

No.	Type of Violation	The Testimony/Misstatement	The Truth
4.	<p><u>Giglio misstatement to the Court and jury:</u> The Cardiac Hospital Management purchase order was "fake." (By Prosecution.)</p>	<p>PROSECUTOR: "Over the last two weeks, the evidence has [] demonstrated that Mr. Stein [] faked purchase orders []." Closing, Trial Tr. Vol. 10 at 17. "So how did Martin Carter and Mitchell Stein go about creating these fake sales? Fake purchase orders. You saw those throughout the trial. <u>Cardiac Hospital Management, exhibit 300, \$1.98 million.</u> Now, the evidence is pretty clear that, I'd submit, that <u>that was all made up.</u>" <i>Id.</i> at 34. "Now, the wire fraud, part of the scheme that involves the wire fraud is about getting the -- <u>it's about the false purchase orders and the fake sales</u> that were helping to get the stock price up, helping him sell the shares that he had stolen from Signalife." <i>Id.</i> at 46. "Now, all those lies Mitchell Stein told the people about [] <u>fake purchase orders</u>, they were all part of a scheme that he had developed." <i>Id.</i> at 23. "[Mr. Stein is] urging upon you today in closing argument, that somehow Tom Tribou's payment makes the <u>Cardiac Hospital Management purchase order</u> legitimate, not fake." <i>Id.</i> at 116-117. "[R]egardless of whatever signature Mr. Stein was able to get on that purchase order, <u>it's a fake purchase order</u>, and it was put together at the direction of the same person who put together those other purchase orders, the two IT Healthcare purchase orders; Mr. Stein." <i>Id.</i> at 118-119.</p>	<p>Tribou's testified before the SEC as follows: Q "But you recall that Cardiac Hospital Management is the same name that's listed on the purchase order -" TRIBOU: "That's what I saw on the purchase order, yeah." Q "That you signed?" TRIBOU: "Yeah." [] Q "Okay. Now, you understood that this would be a purchase order?" TRIBOU: "Correct." Q "You were going to own the units?" TRIBOU: "Correct." Q "At the top, it says -- in the grid, in the top line, it says, 'method of payment, lease.'" TRIBOU: "They might have put that in there because I only put down 50 grand -- I don't know what the lease thing was. Because I was buying the units.[...]" Q "And as far as you understood, <u>you were buying 180 units?</u>" TRIBOU: "Correct." Q "For \$11,000 each?" TRIBOU: "Correct." Q "For a total price of \$1,980,000?" TRIBOU: "Correct." Q "And you were going to deposit -- <u>you were going to send a check for the deposit of \$50,000?</u>" TRIBOU: "Correct." Q "Okay. And when would the -- the balance be paid?" TRIBOU: "As I sold the units, I would have 90 days to pay them the money. I wasn't getting -- I wasn't getting 180 units at one time." Ex. A to Decl. of Reichardt.</p>
5.	<p><u>Giglio misstatement to the Court:</u> Mr. Tribou was never a reseller. (By Prosecution.)</p>	<p>PROSECUTOR: "[Tribou] never was a reseller []." Trial Tr. Vol. 9 at 41.</p>	<p>Contrary to the Prosecution's statement, Tribou testified before the SEC: TRIBOU: "As I sold the units, I would have 90 days to pay them the money." [...] Q "And you were going to resell [the Signalife units] at a higher price?" TRIBOU: "Yeah." Ex. A to the Decl. of Reichardt.</p>
6.	<p><u>Giglio misstatement to the Court:</u> Mr. Tribou doesn't know what 'Tribou & Associates' is. (By Prosecution.)</p>	<p>PROSECUTOR: "[The check] furthermore says Tribou & Associates. Mr. Tribou indicated on the phone he's not familiar with what that even is." Trial Tr. Vol. 9 at 57.</p>	<p>Tribou's SEC testimony: Q "Where did he get the name Tribou and Associates?" TRIBOU: "That's mine. That's what my taxes are underneath; that's what I do everything, all of my separate consulting with. [...] Lowell and I had talked about it - [...] and I told him to put it through as Tribou and Associates." Ex. A to the Decl. of Reichardt.</p>
7.	<p><u>Giglio misstatement:</u> Mr. Tribou doesn't have a copy of the CHM purchase order. (By Prosecution.)</p>	<p>PROSECUTOR: "Mr. Stein didn't give them a copy of this purchase order, which he doesn't recall having a purchase order number in there." Trial Tr. Vol. 9 at 57. (Referring to the identical purchase order number (H-2003-0001) on the check's legend as well as the purchase order, Govt. Exhs. 64, 300.) Ex. O to Decl. of Reichardt.</p>	<p>Mr. Tribou produced a copy of the CHM purchase order to the SEC, bates numbered SEC-TT0003-SEC-TT0008. Ex. P to Decl. of Reichardt. The purchase order produced by Tribou contains a fax header at the bottom which shows the fax number of Tribou's accountant in Oregon, dated September 20, 2007. SEC Tr. at 187-188. Ex. A to Decl of Reichardt.</p>

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8.	<u>Giglio misstatement to the jury:</u> Mr. Stein made up the name IT Health Care. (By Prosecution Witness.)	CARTER: "Because [Mr. Stein is] the one who made up all these names. [...] Of the companies, the IT Healthcare, and Cardiac Management." Trial Tr. Vol. 6 at 112.	Obtained from the Office of the Comptroller of the State of Texas is the Franchise Tax Account Status of a company called IT Health Care Partners, Inc. in the State of Texas, just as set forth on the purchase order. Ex. C to the Decl. of Reichardt. ³
9.	<u>Giglio misstatement to the jury:</u> "IT Healthcare, Texas Warehouse" (Govt. Ex. 70) was "made up." (By Prosecution.)	PROSECUTOR: "Cardiac Hospital Management was made up. Tony Nony was made up. Just like Yossi Keret, just like IT Healthcare." Closing, Trial Tr. Vol. 10 at 119.	
10.	<u>Giglio misstatement/perjury to the jury:</u> Carter did not do business in Israel for Signalife. (By Prosecution Witness.)	Q "Did you have any business contacts in Israel, Mr. Carter?" CARTER: "Not really." Trial Tr. Vol. 6 at 46. CARTER: "[In Israel] I just went sightseeing, ate. That's about it. [...] No, I did not [convince anyone in Israel to buy Signalife product]." <i>Id.</i> at 56. CARTER: "I created the [change of address] document. [...] Because I was told to by Mitchell Stein." <i>Id.</i> at 57. CARTER: "Because [Mr. Stein is] the one who made up all these names." <i>Id.</i> at 112.	Paul Cohen executed a confidentiality agreement with Carter on January 3, 2008, when Carter was in Israel. Ex. D to Decl. of Reichardt. Mr. Cohen's address is Smilansky St., Netanya, Israel, as shown on the change of address letter. Ex. F to Decl. of Reichardt.
11.	<u>Giglio perjury to the jury:</u> Carter and his relatives were not involved in Cardiac Hospital Management. (By Prosecution Witness.)	Q "Is Mr. Mijares in any way associated with a company called Cardiac Hospital Management?" CARTER: No, he was not." Trial Tr. Vol. 6 at 42.	Ex. H to the Decl. of Reichardt in support of the First Motion for New Trial shows the Antonio Mijares change of address letter on behalf of CHM, which was never identified by the DOJ. Mr. Mijares is Mrs. Carter's uncle.
12.	<u>Giglio perjury/misstatement to the jury:</u> Carter's relatives and contacts were not involved in buying and reselling Signalife product. (By Prosecution Witness.)	Q "Were you going to sell products to [your wife's uncle]?" CARTER: "No." Trial Tr. Vol. 6 at 55.	Ex. M to the Decl. of Reichardt filed herewith is a newly discovered signature page to be executed by Carter's uncle, "International Partner," Pacific Global Cardiovascular, and Dr. Harmison. The Defense was never provided with the full document.

³ The DOJ cannot say "Mr. Stein could have still made up the name IT Health Care, Texas," even though there really is an IT Health Care, Texas. The "could have" standard forces the Government to prove beyond a reasonable doubt that the misstatement "could not have" affected the jury beyond a reasonable doubt, and not that the Government's failure to research the public records "could have" made its misstatements possibly explainable in hindsight.

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13.	<u>Giglio misstatement to the jury:</u> Cutter did not know of Carter's distribution plans with the Signalife boxes stored at his home. (By Prosecution Witness.)	Q "Did [Carter] tell you that he was trying to set up some sort of distribution network for medical devices?" CUTTER: <u>No, he didn't.</u> Trial Tr. Vol. 3 at 198.	Cutter's SEC testimony reveals that Carter told Cutter that he stored the boxes at Cutter's home because Carter was planning to distribute them to end-users: CUTTER: "Supposedly, [Carter] was going to <u>distribute</u> them somewhere in the Midwest. I say 'Midwest,' because it's just a generality for me, my purposes. I cannot recall, and I'm sure he told me where he was <u>delivering</u> them, but at this point, I cannot recall what he had said to me." Q
14.	<u>Giglio misstatement to the jury:</u> The "fake" shipments to Cutter were orchestrated by Mr. Stein. Cutter didn't know that Carter intended to distribute the Signalife devices stored at his house. (By Prosecution.)	PROSECUTOR: "[] fake shipping of products that Mr. Stein orchestrated [] Mr. Stein got Mr. Carter to send stuff to his buddy, Tim Cutter." Closing; Trial Tr. Vol. 10 at 41. PROSECUTOR: "[] just a dummy address to use as a mail drop, a lie to make it look like good things were happening with the company." Opening; Trial Tr. Vol. 2 at 22. PROSECUTOR: "[Cutter] <u>didn't understand really why</u> [Carter asked him to hold on to the boxes]; he just did it because his friend asked him to." Closing; Trial Tr. Vol. 10 at 41.	"So, you understood that this -- these boxes pertained to some sort of business that Mr. Carter was doing?" CUTTER: " <u>Yeah.</u> " [...] Q "So, the manufacturer was going to send them to a <u>distributor</u> , who was going to send them to the <u>end-user</u> ?" CUTTER: "Correct. I guess that -- correct, as <u>Marty being the distributor.</u> " Q "And, in that phone call, did [Carter] mention anything about the boxes being affiliated with Signalife or Mitchell Stein?" CUTTER: "Mitchell Stein, no. He may have expressed to me what was in the boxes []." [] "Marty's always done that. He's, like, 'Tim, if I ever make it rich, you know, I'm going to bring you with me,' that type of stuff. []" Ex. A to Decl. of Reichardt.
15.	<u>Giglio perjury/misstatement to the jury:</u> Carter never spoke to anyone from IT Health Care. (By Prosecution Witness.)	Q "Have you ever talked to anyone from IT Healthcare?" CARTER: "No, I did not." Trial Tr. Vol. 6 at 59.	(1) Tim Cutter's SEC testimony identifies Avi on the IT Health Care purchase order potentially as Carter's relative: Q "Have you ever heard of a person named Avi Cohen?" CUTTER: "I have, I think. Is -- I'm not sure, but it may be a nephew, or something, of Marty. Now, I'm not sure that's his last name. I've heard of the name Avi before, and I've heard, it's a -- I think it's -- might be Susie's kids, I'm not sure. Susie's [Carter's] sister. I've heard of the name Avi. I don't know if that's the last name." Ex. A to the Decl. of Reichardt; (2) Paul Cohen, who Carter met and signed an agreement with Carter in Israel, has an address on Smilansky St, Netanya, Israel, <u>the address on the IT Health Care change of address letter.</u> Paul Cohen might be related to Avi Cohen. Ex. D to Decl. of Reichardt.

No.	Type of Violation	The Testimony/Misstatement	The Truth
16.	<u>Giglio misstatements to the jury:</u> There is no Yossi Keret. (By Prosecution.)	PROSECUTOR: "Confirmation letters faxed by Martin Carter, at Mr. Stein's direction, with names Mr. Stein made up, Tony Nony, Yossi Keret." Closing, Trial Tr. Vol. 10 at 28. PROSECUTOR: "[] that was all made up. There's no Tony Nony, there's no Yossi Keret." Closing, Trial Tr. Vol. 10 at 34. [] "There's not one shred of credible evidence that these people existed or these contracts actually happened." [] "You heard the evidence, ladies and gentlemen, made up." <i>Id.</i> at 39. [] "Tony Nony was made up. Just like Yossi Keret, just like IT Healthcare." <i>Id.</i> at 119.	At all times material hereto, there was a Yossi Keret, he reported to the SEC as CFO of a biotechnology company with offices in Israel. See Ex. J Decl. of Reichardt in support of First Motion for New Trial.
17.	<u>Giglio perjury to the jury:</u> 10 Smilansky St., Netanya Israel is a made up address. (By Prosecution Witness.)	CARTER: "It's a made up address." Trial Tr. Vol. 6 at 59. CARTER: "Because [Mr. Stein is] the one who made up all those -- the name of the companies and everything." <i>Id.</i> at 108.	(1) Electrical Product Imports & Marketing is located at 10 Smilansky St, Netanya, Israel (Ex. K to First Motion for New Trial); Compare to Carter's companies Electrical Connections (Govt. Ex. 96) ⁴ and M&C Electrical; (2) Paul Cohen is also located on Smilansky Street, Netanya, Israel – the address on the change of address letter. Cohen and Carter executed a confidentiality agreement. Ex. D to Decl. of Reichardt. ⁵
18.	<u>Giglio misstatement to the jury:</u> Mr. Stein gave Mr. Carter the info and told him to create "fake" change of address forms. (By Prosecution.)	PROSECUTOR: "So Mr. Stein has Mr. Carter create some fake address forms. [...] You heard the evidence, ladies and gentlemen, made up." Closing, Trial Tr. Vol. 10 at 38-39. [] "[Mr. Stein] gave [Mr. Carter] the info, the names, told him exactly what to do." <i>Id.</i> at 47.	
19.	<u>Giglio perjury to the jury:</u> John Woodbury got everything for the Form 10-Q for the period ending 9/30/07 from Mr. Stein. (By Prosecution Witness.)	Q "And again, at the time you prepared and filed this quarterly filing, this 10-Q, with the SEC, did you have any additional independent information about these purchase orders other than what we've seen?" WOODBURY: "No, I did not. I did not speak to Dr. Harmison. I got all my information from Mr. Stein." Trial Tr. Vol. 2 at 96.	The email chain transmitting the Tribou check shows that Woodbury received information from the CPA, and audit committee member Norma Provencio when he was preparing the 10-Q, pertaining to the CHM purchase order. Ex. B to the Decl. of Reichardt in support of First Motion for New Trial.

⁴ Compare also with "M&C Electrical", the business Carter started in 1990.

⁵ Compare with the name "Avi Cohen" who signed the It Health Care purchase order. Govt. Ex. 70, Ex. C to the Decl. of Reichardt.

No.	Type of Violation	The Testimony/Misstatement	The Truth
20.	<u>Giglio perjury/misstatement to the jury:</u> Tracy Jones called the purchase orders "phantom" because she did not receive anything "on them." (By Prosecution Witness.)	JONES: "Well, I had a discussion with Lee Erlichman [sic] when he came to visit the office that I called them phantom purchase orders because I never received any backup or anything on them." Trial Tr. Vol. 3 at 117.	Jones' suppressed email embedded within others shows she is was not being truthful. See Ex. B to the Decl. of Reichardt in support of First Motion for New Trial. This Tracy Jones email which is embedded in the email chain was never produced to the Defense. The SEC database has been suppressed: A criminal defendant need only make a "plausible showing" that the Government's files contain relevant evidence, and that an evidentiary hearing should be held if the trial court has any doubts about the contents of the database.
21.	<u>Giglio misstatements to the jury:</u> The alleged "phantom" nature of the purchase order is why Woodbury and Pickard sent confirmation letters. (By Prosecution.)	PROSECUTOR: "You heard the evidence, ladies and gentlemen, made up." Closing, Trial Tr. Vol. 10 at 38-39. [] "Remember Tracy Jones mentioned the phantom purchase orders. So naturally, John Woodbury, the SEC lawyer; and Kevin Pickard, the CFO, want to send out confirmation letters []." <i>Id.</i> at 40.	<i>Pennsylvania v. Ritchie</i> , 480 U.S. 39 (1987). A "plausible" showing has been made and the refusal to give Defendant access to the SEC database is another violation of <i>Brady</i> . WOODBURY: "These purchase orders dated back seven, eight months prior to them. There had been a number of delays that they had not been fulfilled dealing with issues on chips and Blue Tooth and a bunch of technical stuff. [] I prepared confirmation documents that would be sent to these purchasers that would address the various concerns that I had that I had expressed." Trial Tr. Vol. 2 at 100-101.
22.	<u>Giglio misstatements to the Court:</u> The SEC was involved in an entirely different investigation than the DOJ, although, at times, parallel. (By Prosecution.)	PROSECUTION: "The SEC is of course a federal agency entirely separate and distinct from the Department of Justice, and Department of Justice prosecutors do not as a general matter have [] access to SEC materials." DE 46 at 5. [] "[T]he SEC's investigation predated and has been entirely separate from, although at times parallel to, the Department of Justice's investigation, and that therefore the United States' discovery obligations do not extend to materials in the possession of the SEC." <i>Id.</i> at 6.	(1) Ex. A to the Decl. of Reichardt in support of Defendant's Reply to the United States' Opposition to the First Motion for New Trial (DE 305-1) shows DOJ press releases revealing the SEC's "substantial assistance" in this matter; (2) At the April 3, 2013 <i>Faretta</i> hearing, the Prosecution admitted it received its "small subset" of documents from the SEC (not from Signalfire and not from RenewData) pursuant to an "access request," (<i>Faretta</i> Tr. at 41) which substantiates the extent to which files were shared between the two agencies.
23.	<u>Giglio misstatements to the Court:</u> The DOJ did not have access to the SEC's database. (By Prosecution.)	PROSECUTION: "[A]t no point in time did the prosecution team in this matter have access to [the database]." DE 292 at 14. [] "That smaller database, created by the United States for discovery in this matter, is the only one to which the United States has access. Stein's effort to muddy the facts on this point, and to do so with such total disregard for his own statements, should not be countenanced by this Court." <i>Id.</i> at 14. [] "The database to which Stein is likely referring is one established by Signalfire and its attorneys during the SEC's investigation of this matter using a vendor called Renew Data." <i>Id.</i>	PROSECUTION: "That's this sort of 200-plus million pages or documents, I've lost track of which one it is. That's that universe of documents. [...] A very small subset of those documents were provided by the SEC to the Department of Justice pursuant to an access request. Those documents, for document management purposes, were then, admittedly, put into a database by my office." Tr. of <i>Faretta</i> hearing at 41. (Emphasis added.)

Dated: January 16, 2014

Respectfully Submitted,

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By: _____ /s/
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 16, 2014, I electronically filed the foregoing documents with the Clerk of the Court and all counsel of record using CM/ECF.