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UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

**In the Matter of Gregory T. Bolan, Jr. and
Joseph C. Ruggieri, Respondents.**

Admin. Pro. File No. 3-16178

**REPLY AFFIDAVIT OF SAMUEL J. LIEBERMAN IN SUPPORT OF RESPONDENT
GREGORY T. BOLAN, JR.'S MOTION FOR SUMMARY DISPOSITION**

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

I, Samuel J. Lieberman, Esq. being duly sworn, deposes, and states, under penalty of perjury, as follows:

1. I am a partner in the law firm of Sadis & Goldberg LLP, counsel for Respondent Gregory T. Bolan, Jr. in the above-captioned matter.

2. Attached as Exhibit 1 is a true and correct copy of an October 22, 2009 email from Joseph Ruggieri to Geoffrey Snyder, with the subject "RE: Analyst Feedback," bearing production number WF-001594765

3. Attached as Exhibit 2 is a true and correct copy of a July 21, 2010 email from Joseph Ruggieri to Geoffrey Snyder, with the subject "RE: Analyst Feedback," bearing production number WF-2154399.

4. Attached as Exhibit 3 is a true and correct copy of a July 21, 2010 email from Joseph Ruggieri to Geoffrey Snyder, with the subject "RE: 3Q Analyst Feedback," bearing production number WF-2014432.

5. Attached as Exhibit 4 is a true and correct copy of the January 22, 2015 Order in *United States v. Conradt*, 12-cr-887 (ALC) (S.D.N.Y.), dkt. no. 166, vacating four guilty pleas based on the ruling in *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014).

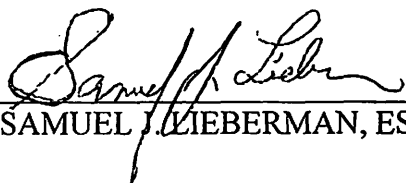
6. Attached as Exhibit 5 is a true and correct copy of the January 28, 2015 letter from United States Attorney Preet Bharara to the Court in *United States v. Conradt*, 12-cr-887 (ALC) (S.D.N.Y.), dkt. no. 167, stating that he intended to dismiss all charges in the case.

7. Attached as Exhibit 6 is a true and correct copy of the February 3, 2015 Order dismissing all charges without prejudice in *United States v. Conradt*, 12-cr-887 (ALC) (S.D.N.Y.), dkt. no. 170.

8. Attached as Exhibit 7 is a true and correct copy of the Jury Verdict Form rejecting liability against all defendants in *S.E.C. v. Obus*, 06 Civ. 3150 (GBD) (S.D.N.Y., June 2, 2014).

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information.

FURTHER AFFIANT SAYETH NAUGHT.

By: 
SAMUEL J. LIEBERMAN, ESQ.

The foregoing instrument was sworn to before me this 6th day of February, 2015, by Samuel J. Lieberman, Esq. who is personally known to me.

(Notary's Signature) *Patricia Green*

(Print Notary's Name) PATRICIA GREEN

NOTARY PUBLIC, STATE OF NEW YORK

My Commission Expires: June 14, 2016

PATRICIA GREEN
Notary Public - State of New York
Qualified in Kings County
My Commission Expires June 14, 2016

EXHIBIT 1

From: Ruggieri, Joseph [REDACTED]
Sent: Thursday, October 22, 2009 2:22 PM
To: Snyder, Geoffrey
Subject: RE: Analyst Feedback

Greg Bolan

Vince Ricci

Aaron Reames

These guys have been the most proactive and helpful in the few weeks since I joined. Bolan's in a league of his own- great dialogue w/ clients and gets it. Reames very smart, probably underappreciated on the street but solid- needs to be more visible and probably meet more clients- great asset. Vince Ricci has been solid, would love to see him pick up some names. James Omstrom has also been helpful lately with some of Tong's names.

From: Degregorio, Eva On Behalf Of Snyder, Geoffrey
Sent: Thursday, October 22, 2009 3:10 PM
To: Institutional Sales (Brokers Only); Sales Trading All US
Cc: Bartlett, Chris; Brown, Matthew; Snyder, Geoffrey
Subject: Analyst Feedback

We would like for each of you to have the opportunity to comment on the analysts who you believe have been the most helpful during the 3Q.

Please submit a list to me by the close of business Tuesday 10/27.

We will accumulate all of the responses and communicate the results (assuring individual anonymity) to Equity and Research Management.

Thank you to those who have already submitted their views.

Thank you.

Geoffrey

Geoffrey E. Snyder

Managing Director

Head of Equity Sales

Wells Fargo Securities, LLC

375 Park Avenue

New York, NY 10152

[REDACTED]

[REDACTED]

e: [REDACTED]

[REDACTED]

EXHIBIT 2

From: Ruggieri, Joseph [REDACTED]
Sent: Wednesday, July 21, 2010 3:25 PM
To: Snyder, Geoffrey
Subject: RE: Analyst Feedback

Bolan is far and away the best. And Costa getting off the ground has been very helpful as well. I'd put Biegelsen 3rd but have to get on the same page with communication and think that is where our biggest opportunity is. ~~I can elaborate on all of these if you need~~

From: Snyder, Geoffrey
Sent: Tuesday, July 20, 2010 7:22 AM
To: Institutional Sales (Brokers Only); Sales Trading All US; Cash Position Trading
Cc: Bartlett, Chris; Brown, Matthew; Degregorio, Eva
Subject: Analyst Feedback

We would like for each of you to have the opportunity to indicate the analysts who you believe have been the most helpful during the 2Q.

Please submit a list to me by the close of business tomorrow, Wednesday 7/21. Apologize for the quick turnaround.

We will accumulate all of the responses and communicate the results (assuring individual anonymity) to Equity and Research Management.

Thank you,

Geoffrey

Geoffrey E. Snyder

EXHIBIT 3

EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

1/22/2015

UNITED STATES OF AMERICA,

-v-

12 Cr. 887 (ALC)

ORDER

~~THOMAS CONRADT, et al.,~~

Defendants.

ANDREW L. CARTER, JR., United States District Judge:

Under Rule 11(b)(3) of the Federal Rules of Criminal Procedure, a district court judge has an obligation up through the entry of judgment to vacate a previously-accepted guilty plea and enter a plea of not guilty on behalf of a defendant if it becomes clear that there no longer is a sufficient factual basis for the plea. *See, e.g., United States v. Culbertson*, 670 F.3d 183, 191 n. 4 (2d Cir. 2012) (citing *United States v. Smith*, 160 F.3d 117, 121 (2d Cir. 1998)). The Second Circuit has said that, in determining whether such a factual basis exists, judges should “match[] the facts in the record with the legal elements of the crime.” *United States v. Calderon*, 243 F.3d 587, 589-90 (2001) (alteration in original) (citing *United States v. Smith*, 160 F.3d 117, 121 (2d Cir. 1998)). Facts considered to be in the record can include not only the defendant’s allocution, but also any representations made by counsel for the defense and the government on the record and the allegations in the indictment. *Smith*, 160 F.3d at 121.

In this case, after reviewing the Second Circuit’s decision in *United States v. Newman*, Nos. 13-1837-cr (L), 13-1917-cr (con), 2014 WL 6911278 (Dec. 10, 2014), as well as all the facts in the record with respect to the guilty pleas of Defendants Thomas Conradt, David Weishaus, Trent Martin and Daryl Payton, this Court advised the parties on December 18, 2014 that it was inclined to vacate their guilty pleas. Specifically, the Court was skeptical that the

pleas were sufficient in light of *Newman*'s clarification of the personal benefit and tippee knowledge requirements of tipping liability for insider trading. *See* 2014 WL 6911278, at *9-*13. The Court reserved decision, however, in light of the Government's request for an opportunity to submit briefing in support of their position that *Newman*'s analysis does not apply in insider-trading cases prosecuted under a misappropriation theory. After having reviewed that submission, as well the Defendants' submissions in response, the Court hereby **VACATES** each of the aforementioned guilty pleas and enters pleas of **NOT GUILTY** on behalf of those Defendants.

Specifically, this Court finds that, as indicated in *Newman*, the controlling rule of law in the Second Circuit is that "the elements of tipping liability are the same, regardless of whether the tipper's duty arises under the 'classical' or the 'misappropriation' theory." 2014 WL 6911278, at *4 (citing *SEC v. Obus*, 693 F.3d 276, 285-86 (2d Cir. 2012)); *see also Obus*, 693 F.3d at 285-86 ("The Supreme Court's tipping liability doctrine was developed in a classical case, but the same analysis governs in a misappropriation case.") (citation omitted).

Additionally, even if *Newman* did not specifically resolve the issue, the Court is swayed by the fact that *Newman*'s unequivocal statement on the point is part of a meticulous and conscientious effort by the Second Circuit to clarify the state of insider-trading law in this Circuit.

Accordingly, even assuming *arguendo* that the Government is correct that the cited language in *Newman* is dicta, it is not just any dicta, but emphatic dicta which must be given the utmost consideration. *See Jimenez v. Walker*, 453 F.3d 130, 142 (2d Cir. 2006) ("Dicta deserve close

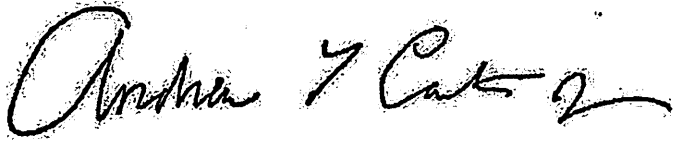
consideration; emphatic dicta, all the more.”¹ Finally, the Court notes that it agrees with *Newman*’s articulation of the requirements of tipping liability and its statement that such analysis applies equally in misappropriation cases. *Accord SEC v. Yun*, 327 F.3d 1263, 1274-80 (11th Cir. 2003).

At the January 23, 2015 status conference, the Court will address Defendants Benjamin Durant and Daryl Payton’s Motion to Dismiss the Indictment (ECF Nos. 148, 160, at 6 n.4), as well as the Government’s request that, under *United States v. Mennuti*, 639 F.2d 107 (2d Cir. 1981), and its progeny, this Court evaluate the sufficiency of the Government’s intended proof at trial. The Court excuses each one of the Defendants from personally appearing at the conference, and the Clerk of Court is respectfully directed to terminate ECF numbers 162, 164 and 165.

SO ORDERED.

Dated: January 22, 2015

New York, New York



ANDREW L. CARTER, JR.
United States District Judge

¹ The Government’s related argument that prior Second Circuit decisions have held that a personal benefit to the tipper is not required in misappropriation cases is similarly unavailing. *Newman* construes each one of the authorities the Government cites in this regard to be consonant with its holding. *See, e.g., Newman*, 2014 WL 6911278, at *4, *6-*7. Moreover, the relevant language from *United States v. Libera*, 989 F.2d 596 (2d Cir. 1993), on which the Government relies most heavily in support of this proposition, has itself been construed to be mere implication in dicta. *SEC v. Sargent*, 229 F.3d 68, 77 (1st Cir. 2000) (observing of *Libera*: “[t]he Second Circuit strongly implied, also in dicta, that there was no need to make an affirmative showing of benefit in cases of misappropriation”).

EXHIBIT 5



*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

January 28, 2015

By Electronic Mail

The Honorable Andrew L. Carter, Jr.
United States District Judge
Southern District of New York

E-mail: [REDACTED]

Re: United States v. Benjamin Durant, et al.
12 Cr. 887 (ALC)

Dear Judge Carter:

The Government respectfully submits this letter in advance of the status conference scheduled for January 29, 2015. As the Court is aware, two defendants (Benjamin Durant and Daryl Payton) have pending motions to dismiss the Indictment based on the legal issues raised in *United States v. Newman*, No. 13-1837-cr, 2014 WL 6911278 (2d Cir. Dec. 10, 2014). At the last conference in this matter, the Court asked the Government to provide an affidavit with additional facts, to the extent there are any, to assist the Court in deciding those motions. The other three defendants (Trent Martin, Thomas Conradt, and David Weishaus) argued that the Government should move to dismiss the Indictment against them.

In *Newman*, the Second Circuit substantially changed the law pertaining to insider trading. As the Government set forth in its letter of January 19, 2015, *Newman* creates a novel evidentiary bar for tipper benefit, and tippee knowledge of such a benefit, that the Government cannot now meet. That is why, in the unique circumstances of this case, and under the applicable Second Circuit law, the Government urged this Court to grant the defendants' motion to dismiss the Indictment.

In addition, the Court, rejecting the Government's argument that the *Newman* decision does not apply to misappropriation cases, vacated the guilty pleas of the three cooperating witnesses. Much of the Government's anticipated evidence relating to the benefit received by the tipper and the knowledge of the benefit by the tippees would have been offered through the testimony of these cooperating witnesses. And what remains of the Government's evidence on these key issues falls short of *Newman*'s newly-imposed legal requirements, rendering moot the need for an additional factual proffer in the form of an affidavit.

Under these circumstances, it remains the Government's position that the Court can and should grant the defendants' motion to dismiss the Indictment, both because it has sufficient information to do so, and because it would preserve the Government's ability to consider an appeal of the dismissal, in light of the Government's pending petition for rehearing and rehearing *en banc* in *Newman*. But to the extent the Court elects not to grant the defendants' motion, the Government has determined that, based on the newly-announced standards set forth in *Newman*, and the Court's decision to vacate the guilty pleas of the Government's cooperators, the Government intends to move, pursuant to Federal Rule of Criminal Procedure 48(a), for ~~dismissal without prejudice of the charges against all five defendants in this case.~~ *See, e.g., United States v. Rosenberg*, 108 F. Supp. 2d 191, 207-208 (S.D.N.Y. 2000) (the Second Circuit has recognized that "a dismissal pursuant to Rule 48(a) is generally without prejudice") (citing *United States v. Ortega-Alvarez*, 506 F.2d 455, 458 (2d Cir. 1974)).

Thank you for your consideration of these matters.

Respectfully submitted,

PREET BHARARA
United States Attorney

By: //s//
Jessica Masella
Andrew Bauer
Damian Williams
Assistant United States Attorneys
████████████████████

cc: All Counsel
(By ECF and Electronic Mail)

EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
:
UNITED STATES OF AMERICA :
:
- v. - :
:
THOMAS CONRADT, :
DAVID WEISHAUS, :
TRENT MARTIN, :
DARYL PAYTON, and :
BENJAMIN DURANT, :
:
Defendants. :
:
----- x

NOLLE PROSEQUI
12 Cr. 887 (ALC)


SEARCHED
SERIALIZED
INDEXED
FILED
FEB 3 2015
2-3-15

1. The filing of this nolle prosequi will dispose of this case with respect to the defendants THOMAS CONRADT, DAVID WEISHAUS, TRENT MARTIN, DARYL PAYTON and BENJAMIN DURANT.

2. On November 29, 2012, Indictment 12 Cr. 887 (ALC) charging THOMAS CONRADT and DAVID WEISHAUS with conspiring to commit securities fraud, and committing securities fraud in connection with insider trading, was unsealed. On December 26, 2012, Indictment S1 12 Cr. 887 (ALC), charging TRENT MARTIN with conspiring to commit securities fraud, and committing securities fraud in connection with insider trading, was unsealed. On June 25, 2014, Indictment S2 12 Cr. 887 (ALC), charging BENJAMIN DURANT and DARYL PAYTON with conspiring to commit securities fraud, and committing securities fraud in connection with insider trading, was unsealed. On October 29, 2014, Indictment

S3 12 Cr. 887 (ALC), containing the same charges against BENJAMIN DURANT and DARYL PAYTON, was returned. On November 19, 2014, Indictment S4 12 Cr. 887 (ALC), containing the same charges against BENJAMIN DURANT, was returned.

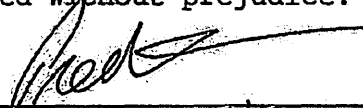
~~3. On January 22, 2015, the Court vacated the previously~~
entered guilty pleas for MARTIN, CONRADT, WEISHAUS and PAYTON in light of the Second Circuit's recent opinion in *United States v. Newman*, No. 13-1837-cr, 2014 WL 6911278 (2d Cir. Dec. 10, 2014) ("*Newman*"). Based on a review of the evidence in the case and the evidence that is no longer available as a result of the guilty pleas of cooperators being vacated, as well as the Court's holding that *Newman* applies to the case, we recommend that, in the interests of justice, an order of nolle prosequi be filed as to defendants THOMAS CONRADT, DAVID WEISHAUS, TRENT MARTIN, DARYL PAYTON and BENJAMIN DURANT and that the charges against the defendants contained in Indictment 12 Cr. 887 (ALC) and all subsequent superseding indictments be dismissed without prejudice.



JESSICA MASELLA
ANDREW BAUER
DAMIAN WILLIAMS
Assistant United States Attorneys
[REDACTED] [REDACTED] [REDACTED] [REDACTED]

Dated: New York, New York
January 30, 2015

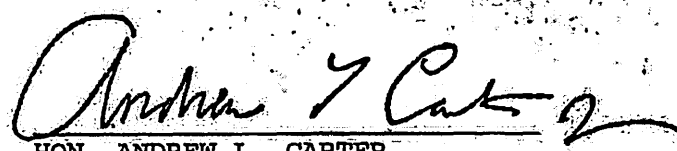
Upon the foregoing recommendation, I hereby direct, with leave of the Court, that an order of nolle prosequi be filed as to defendants THOMAS CONRADT, DAVID WEISHAUS, TRENT MARTIN, DARYL PAYTON and BENJAMIN DURANT with respect to Indictment 12 Cr. 887 (ALC) and all superseding indictments, and the charges against the defendants be dismissed without prejudice.



PREET BHARARA *PHC*
United States Attorney
Southern District of New York

Dated: New York, New York
January 30, 2015

SO ORDERED:

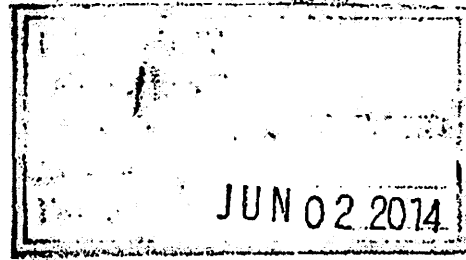


HON. ANDREW L. CARTER
United States District Judge
Southern District of New York

Dated: New York, New York
~~January~~ 3, 2015
February

EXHIBIT 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

Jury Verdict Form

NELSON J. OBUS, PETER F. BLACK, and
THOMAS BRADLEY STRICKLAND,

06 Civ. 3150 (GBD)

Defendants.

Thomas Bradley Strickland

1. Did Plaintiff SEC prove by a preponderance of the evidence that Defendant Strickland engaged in insider trading by disclosing material non-public information about the SunSource acquisition to Defendant Black to trade in SunSource stock, in breach of Strickland's duty to GE Capital, from which Strickland benefitted?

Yes

No

Peter F. Black

2. Did Plaintiff SEC prove by a preponderance of the evidence that Defendant Black, knowing or having reason to know that Defendant Strickland had provided material non-public information about the SunSource acquisition in breach of his duty to GE Capital, engaged in insider trading by providing that information to Defendant Obus to trade in SunSource stock, from which Black benefitted?

Yes

No

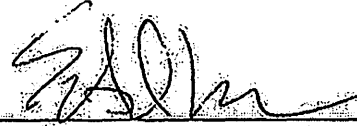
Nelson J. Obus

3. Did Plaintiff SEC prove by a preponderance of the evidence that Defendant Obus engaged in insider trading by buying SunSource stock on behalf of Wynnefield Capital, while in knowing possession of material non-public information about the SunSource acquisition?

Yes

No

Dated: This 30th day of May, 2014

A handwritten signature in black ink, appearing to be 'S. J. M.', written over a horizontal line.

Signature of Foreperson