# United States District Court

FOR THE
**NORTHERN DISTRICT OF CALIFORNIA**

VENUE: SAN FRANCISCO

FILED
2017 SEP 15 A 9:31
SUSAN Y. SOONG
CLERK, US DISTRICT COURT
NO. DIST. OF CA.

[redacted]

UNITED STATES OF AMERICA,

V.

CR 17 491 RS

G. STEVEN BURRILL and MARC HOWARD BERGER,

DEFENDANT(S).

## INDICTMENT

18 U.S.C. § 1343 - Wire Fraud;
15 U.S.C. §§ 80b-6 & 80b-17 & 17 C.F.R. § 275.206(4)-8 - Investment-Adviser Fraud;
26 U.S.C. § 7201 - Tax Evasion;
26 U.S.C. § 7206(2) - Aiding and Assisting in the Preparation of a False Tax Return;
18 U.S.C. § 2 - Aiding, Abetting, and Willfully Causing;
18 U.S.C. §§ 981(a)(1)(C) & 982(a) & 28 U.S.C. § 2461 - Criminal Forfeiture

A true bill.

Karen Williams
Foreman

Filed in open court this 14 day of

September 2017

M Jorgensen
Clerk

SALLIE KIM
United States Magistrate Judge

NO BAIL WARRANT as to both

Bail, $ _____

sallie kim

AO 257 (Rev. 6/78)

# DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT ☐ SUPERSEDING

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FILED

SEP 15 2017

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

## OFFENSE CHARGED

26 U.S.C. § 7206(2) - Aiding and Assisting in the Preparation of a False Tax Return

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY: See attachment.

[redacted]

## DEFENDANT - U.S

Marc Howard Berger

DISTRICT COURT NUMBER

CR 17 491 RS

## PROCEEDING

Name of Complaintant Agency, or Person (& Title, if any)

IRS / FBI

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:
☐ U.S. ATTORNEY ☐ DEFENSE

SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

MAGISTRATE CASE NO.

Name and Office of Person Furnishing Information on this form: ALEX TSE

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned): ROBERT S. LEACH

## DEFENDANT

**IS *NOT* IN CUSTODY**

1) ☒ Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges

2) ☐ Is a Fugitive

3) ☐ Is on Bail or Release from (show District)

**IS IN CUSTODY**

4) ☐ On this charge

5) ☐ On another conviction ☐ Federal ☐ State

6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No — If "Yes" give date filed

**DATE OF ARREST** Month/Day/Year

Or... if Arresting Agency & Warrant were not

**DATE TRANSFERRED TO U.S. CUSTODY** Month/Day/Year

☐ This report amends AO 257 previously submitted

## ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

☐ SUMMONS ☐ NO PROCESS* ☒ WARRANT Bail Amount:

If Summons, complete following:
☐ Arraignment ☐ Initial Appearance

Defendant Address:

Date/Time: Before Judge:

Comments:

** Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment*

PENALTY SHEET ATTACHMENT
(Marc Howard Berger)

Counts Thirty-Two Through Thirty-Four:

26 U.S.C. § 7206(2) – Aiding and Assisting in the Preparation of a False Tax Return

Maximum Penalties: 3 years of imprisonment (26 U.S.C. § 7206)
$250,000 fine or not more than the greater of twice the gross gain or twice the gross loss (18 U.S.C. § 3571)
1 year of supervised release (18 U.S.C. §§ 3583(b) & 3559(a))
$100 special assessment (18 U.S.C. § 3013)

AO 257 (Rev. 6/78)

# DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT ☐ SUPERSEDING

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FILED

SEP 15 2017

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

## OFFENSE CHARGED

18 U.S.C. § 1343 - Wire Fraud;
15 U.S.C. §§ 80b-6 & 80b-17 & 17 C.F.R. § 275.206(4)-8 - Investment-Adviser Fraud;
26 U.S.C. § 7201 - Tax Evasion; and
18 U.S.C. § 2 - Aiding, Abetting, and Willfully Causing

☐ Petty
☐ Minor
☐ Misdemeanor
☒ Felony

PENALTY: See attachment.

[redacted]

## DEFENDANT - U.S

G. STEVEN BURRILL

DISTRICT COURT NUMBER

CR 17 491 RS

## PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

IRS / FBI

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:
☐ U.S. ATTORNEY ☐ DEFENSE

SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

MAGISTRATE CASE NO.

Name and Office of Person Furnishing Information on this form ALEX TSE

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned) ROBERT S. LEACH

## DEFENDANT

**IS *NOT* IN CUSTODY**

1) ☒ Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges

2) ☐ Is a Fugitive

3) ☐ Is on Bail or Release from (show District)

**IS IN CUSTODY**

4) ☐ On this charge

5) ☐ On another conviction ☐ Federal ☐ State

6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No — If "Yes" give date filed

**DATE OF ARREST** Month/Day/Year

Or... if Arresting Agency & Warrant were not

**DATE TRANSFERRED TO U.S. CUSTODY** Month/Day/Year

☐ This report amends AO 257 previously submitted

## ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

☐ SUMMONS ☐ NO PROCESS* ☒ WARRANT Bail Amount:

If Summons, complete following:
☐ Arraignment ☐ Initial Appearance

Defendant Address:

Date/Time: Before Judge:

Comments:

** Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment*

PENALTY SHEET ATTACHMENT
(G. Steven Burrill)

Counts One Through Twenty-Six:

18 U.S.C. §§ 1343 & 2 – Wire Fraud and Aiding and Abetting

Maximum Penalties: 20 years of imprisonment (18 U.S.C. § 1343)
$250,000 fine or not more than the greater of twice the gross gain or twice the gross loss (18 U.S.C. § 3571)
3 years of supervised release (18 U.S.C. §§ 3583(b) & 3559(a))
$100 special assessment (18 U.S.C. § 3013)

Count Twenty-Seven:

15 U.S.C. §§ 80b-6 & 80b-17, 18 U.S.C. § 2, & 17 C.F.R. § 275.206(4)-8 – Investment-Adviser Fraud

Maximum Penalties: 5 years of imprisonment (15 U.S.C. § 80b-17)
$250,000 fine or not more than the greater of twice the gross gain or twice the gross loss (18 U.S.C. § 3571)
3 years of supervised release (18 U.S.C. §§ 3583(b) & 3559(a))
$100 special assessment (18 U.S.C. § 3013)

Counts Twenty-Eight Through Thirty-One:

26 U.S.C. § 7201 – Tax Evasion

Maximum Penalties: 5 years of imprisonment (26 U.S.C. § 7201)
$250,000 fine or not more than the greater of twice the gross gain or twice the gross loss (18 U.S.C. § 3571)
3 years of supervised release (18 U.S.C. §§ 3583(b) & 3559(a))
$100 special assessment (18 U.S.C. § 3013)

ALEX TSE (CABN 152348)
Attorney for the United States,
Acting Under Authority Conferred By
28 U.S.C. § 515

FILED
SEP 15 2017
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SEALED
BY COURT ORDER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

RS

CR 17 491

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>G. STEVEN BURRILL and MARC HOWARD BERGER,<br><br>Defendants. | Case No.<br><br>VIOLATIONS: 18 U.S.C. § 1343 – Wire Fraud; 15 U.S.C. §§ 80b-6 & 80b-17 & 17 C.F.R. § 275.206(4)-8 – Investment-Adviser Fraud; 26 U.S.C. § 7201 – Tax Evasion; 26 U.S.C. § 7206(2) – Aiding and Assisting in the Preparation of a False Tax Return; 18 U.S.C. § 2 – Aiding, Abetting, and Willfully Causing; 18 U.S.C. §§ 981(a)(1)(C) & 982(a) & 28 U.S.C. § 2461 – Criminal Forfeiture<br><br>SAN FRANCISCO VENUE |

# INDICTMENT

The Grand Jury alleges:

## Introductory Allegations

At all times relevant to this Indictment, unless otherwise indicated:

1. Defendant G. STEVEN BURRILL was a Certified Public Accountant ("CPA") licensed in California. He resided in San Francisco, California. BURRILL owned and controlled Burrill & Company LLC ("B&C"), a Delaware limited liability company formed in 1996; Burrill Capital Management, Inc. ("BCMI"), a Delaware corporation formed in 2002; Burrill Capital, LLC ("B-Cap"), a Delaware limited liability company formed in 2006; and Burrill Capital Management, LLC ("BCM"), a Delaware limited liability company formed in 2012 (collectively, the "Burrill Entities"). Through the

Burrill Entities and other entities, BURRILL managed investment funds, including Burrill Life Sciences Capital Fund III, L.P. (the "Fund").

2. Defendant MARC HOWARD BERGER was a CPA licensed in California and Illinois. He resided in Walnut Creek, California. He was a partner of a regional CPA firm that engaged in the business of tax preparation. BERGER supervised other accountants in his firm regarding the preparation of income tax returns which reported income and expenses related to the Fund and the Burrill Entities and for BURRILL individually for the years 2008 through 2013. BERGER signed as the paid preparer on all such returns.

3. The Fund was a Delaware limited partnership formed in or about 2005. It was an investment fund focused on the life sciences industry. From 2006 through 2014, the general partner of the Fund was Burrill Life Sciences Capital Fund III Partners, L.P. ("General Partner"), a Delaware limited partnership, which was controlled and owned in part by Burrill.

4. The Fund's total committed capital was approximately $283 million, most of which was committed by limited partners. The Fund was governed by a Second Amended and Restated Limited Partnership Agreement ("LPA") dated September 15, 2006. The LPA provided for a ten-year term for the Fund, which originally was set to expire in February 2016.

5. The LPA generally required the limited partners to make capital contributions in cash to the Fund upon 10 days' written notice from the General Partner. The LPA provided that the General Partner, or its designee, would be compensated for services rendered to the Fund by the payment of a management fee on the first day of each fiscal quarter equal to 0.5% of the amount of committed capital for six years (and then 0.5% of the cost basis of the investments, plus reserves, after the initial six years). BURRILL represented to the limited partners that the General Partner was not entitled to receive any fees from the Fund except as expressly provided in the LPA. BURRILL represented to the limited partners that the Fund would not make an investment if the General Partner or its members or affiliates had a direct or indirect economic interest in such investment, except as specifically permitted by the LPA. BURRILL further represented that, to the extent sales proceeds from any investment were not distributed within 30 days of their receipt by the Fund, the General Partner would deliver a written

explanation to limited partners setting forth the reason why some or all of such proceeds were not promptly distributed.

6. The LPA prohibited the General Partner and its members, without express approval by an advisory committee of the limited partners, from entering into any transaction that was in any way contrary to the best interests of the Fund; from engaging in any transaction with the Fund except for a transaction on an arm's length basis on terms no less favorable than those available from an unaffiliated party; and from doing any act in contravention of the LPA, or that would be detrimental to the best interests of the Fund, or that would make it impossible to carry on the activities and affairs of the Fund. The LPA also required the General Partner to promptly submit all potential or actual conflicts of interest involving the General Partner and the Fund to the advisory committee for resolution.

COUNTS ONE THROUGH TWENTY-SIX: (18 U.S.C. §§ 1343 & 2 – Wire Fraud and Aiding and Abetting)

7. The factual allegations in Paragraphs 1 through 6 are re-alleged and incorporated by reference.

8. Beginning in or about December 2007, through in or about October 2013, BURRILL, with others, engaged in a scheme and artifice to defraud the Fund and the limited partners and to obtain money and property from the Fund and the limited partners by means of materially false and fraudulent pretenses, representations, and promises, and by omitting and concealing material facts. BURRILL executed the scheme by, among other things, misappropriating money from the Fund. Among other things, BURRILL induced limited partners to contribute capital to the Fund with false and misleading capital call letters and caused the Fund to transfer millions of dollars in excess of the management fee due as provided in the LPA (and that would ever be due) to the Burrill Entities.

9. In furtherance of the scheme to defraud, BURRILL used a variety of means and methods, including the following:

a. BURRILL represented to limited partners that the General Partner was not entitled to receive any fees from the Fund except as expressly provided in the LPA and assured limited

partners that the General Partner would submit all potential or actual conflicts of interest to an advisory committee for resolution;

b. BURRILL signed and sent capital call letters to limited partners demanding the payment of cash; falsely stating that the proceeds of the capital calls would be used for purposes consistent with the LPA; and omitting the fact that BURRILL intended to transfer substantial portions of the proceeds (including an amount beyond what was due under the LPA) to the Burrill Entities;

c. BURRILL caused the Fund to transfer money in excess of the management fee due as provided in the LPA (and that would ever be due) to the Burrill Entities;

d. BURRILL and the General Partner entered into transactions that were contrary to the best interests of the Fund; engaged in transactions with the Fund that were not on an arm's length basis on terms no less favorable than those available from an unaffiliated party; and did acts in contravention of the LPA and that were detrimental to the best interests of the Fund, and that would make it impossible to carry on the activities and affairs of the Fund;

e. BURRILL caused the Fund to fail to distribute sales proceeds from investments within 30 days of their receipt by the Fund, and failed to provide a written explanation to limited partners setting forth the reason why some or all of such proceeds were not promptly distributed; and

f. BURRILL and others (including BERGER) made or caused false entries to be made in the books and records of the Burrill Entities.

10. By September 2013, BURRILL caused the Fund to transfer to the Burrill Entities more than $18 million in excess of the management fee then due under in the LPA (including an amount beyond what would ever be due).

11. On or about the dates set forth below, in the Northern District of California and elsewhere, the defendant,

G. STEVEN BURRILL,

did knowingly devise and intend to devise a scheme and artifice to defraud as to a material matter and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and by omissions and concealment of material facts with a duty to disclose, and, for the purpose of executing such scheme and artifice and attempting to do so, did transmit, and cause to be

transmitted, by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, namely, the following:

| COUNT | APPROXIMATE DATE | DESCRIPTION |
|---|---|---|
| ONE | October 31, 2012 | Capital call letter sent via e-mail and file-sharing service from BURRILL in California to limited partners in various states and countries |
| TWO | November 14, 2012 | $1,762,193 wire transfer from account of Limited Partner #1 ("LP1") at Mellon Trust to the Fund's account (xx3648) at First Republic Bank |
| THREE | November 14, 2012 | $704,877 wire transfer from account of Limited Partner #2 ("LP2") at JP Morgan Chase to the Fund's account (xx3648) at First Republic Bank |
| FOUR | November 14, 2012 | $352,439 wire transfer from account of Limited Partner #3 ("LP3") at BMO Harris Bank to the Fund's account (xx3648) at First Republic Bank |
| FIVE | November 14, 2012 | $172,695 wire transfer from account of Limited Partner #4 ("LP4") at JP Morgan Chase to the Fund's account (xx3648) at First Republic Bank |
| SIX | January 14, 2013 | Capital call letter sent via e-mail and file-sharing service from BURRILL in California to limited partners in various states and countries |
| SEVEN | January 28, 2013 | $1,057,316 wire transfer from LP1's account at Mellon Trust to the Fund's account (xx3648) at First Republic Bank |
| EIGHT | January 28, 2013 | $422,926 wire transfer from LP2's account at JP Morgan Chase to the Fund's account (xx3648) at First Republic Bank |
| NINE | January 28, 2013 | $211,463 wire transfer from LP3's account at BMO Harris Bank to the Fund's account (xx3648) at First Republic Bank |
| TEN | January 28, 2013 | $103,617 wire transfer from LP4's account at JP Morgan Chase to the Fund's account (xx3648) at First Republic Bank |
| ELEVEN | March 18, 2013 | Capital call letter sent via e-mail and file-sharing service from BURRILL in California to limited partners in various states and countries |
| TWELVE | April 1, 2013 | $1,233,535 wire transfer from LP1's account at Mellon Trust to the Fund's account (xx3648) at First Republic Bank |
| THIRTEEN | April 1, 2013 | $493,414 wire transfer from LP2's account at JP Morgan Chase to the Fund's account (xx3648) at First Republic Bank |
| FOURTEEN | April 1, 2013 | $246,707 wire transfer from LP3's account at BMO Harris Bank to the Fund's account (xx3648) at First Republic Bank |

| COUNT | APPROXIMATE DATE | DESCRIPTION |
|---|---|---|
| FIFTEEN | April 1, 2013 | $120,886 wire transfer from LP4's account at JP Morgan Chase to the Fund's account (xx3648) at First Republic Bank |
| SIXTEEN | May 3, 2013 | Capital call letter sent via e-mail and file-sharing service from BURRILL in California to limited partners in various states and countries |
| SEVENTEEN | May 17, 2013 | $704,877 wire transfer from LP1's account at Mellon Trust to the Fund's account (xx3648) at First Republic Bank |
| EIGHTEEN | May 17, 2013 | $281,951 wire transfer from LP2's account at JP Morgan Chase to the Fund's account (xx3648) at First Republic Bank |
| NINETEEN | May 17, 2013 | $140,975 wire transfer from LP3's account at BMO Harris Bank to the Fund's account (xx3648) at First Republic Bank |
| TWENTY | May 17, 2013 | $69,079 wire transfer from LP4's account at JP Morgan Chase to the Fund's account (xx3648) at First Republic Bank |
| TWENTY-ONE | June 13, 2013 | Capital call letter sent via e-mail and file-sharing service from BURRILL in California to limited partners in various states and countries |
| TWENTY-TWO | June 27, 2013 | $422,926 wire transfer from LP1's account at Mellon Trust to the Fund's account (xx3648) at First Republic Bank |
| TWENTY-THREE | June 27, 2013 | $169,171 wire transfer from LP2's account at JP Morgan Chase to the Fund's account (xx3648) at First Republic Bank |
| TWENTY-FOUR | August 16, 2013 | Capital call letter sent via e-mail and file-sharing service from BURRILL in California to limited partners in various states and countries |
| TWENTY-FIVE | August 30, 2013 | $704,877 wire transfer from LP1's account at Mellon Trust to the Fund's account (xx3648) at First Republic Bank |
| TWENTY-SIX | August 30, 2013 | $281,951 wire transfer from LP2's account at JP Morgan Chase to the Fund's account (xx3648) at First Republic Bank |

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNT TWENTY-SEVEN: (15 U.S.C. §§ 80b-6 & 80b-17, 18 U.S.C. § 2, & 17 C.F.R. § 275.206(4)-8 – Investment-Adviser Fraud)

12. The factual allegations in Paragraphs 1 through 10 are re-alleged and incorporated by reference.

13. At relevant times, BURRILL, BCMI, and BCM were investment advisers within the meaning of 15 U.S.C. § 80b-2(a)(11).

14. Beginning in or about December 2007 and continuing through in or about October 2013, in the Northern District of California and elsewhere, the defendant,

G. STEVEN BURRILL,

did willfully and knowingly, by the use of the mails and means and instrumentalities of interstate commerce, directly and indirectly: (a) employ devices, schemes, and artifices to defraud clients and prospective clients as to a material matter; (b) engage in transactions, practices, and courses of business which operated as a fraud and deceit upon clients and prospective clients as to a material matter; and (c) engage in acts, practices, and courses of business that were fraudulent, deceptive, and manipulative as to a material matter, namely, sending false and misleading capital call letters to limited partners and causing the Fund to transfer money in excess of the management fee due as provided in the LPA (and that would ever be due) to the Burrill Entities.

All in violation of Title 15, United States Code, Sections 80b-6 and 80b-17; Title 18, United States Code, Section 2; and Title 17, Code of Federal Regulations, Section 275.206(4)-8.

COUNT TWENTY-EIGHT: (26 U.S.C. § 7201 – Tax Evasion)

15. The factual allegations in Paragraphs 1 through 6 are re-alleged and incorporated by reference.

16. From on or about January 1, 2010, and continuing to on or about October 10, 2011, in the Northern District of California and elsewhere, the defendant,

G. STEVEN BURRILL,

did willfully attempt to evade and defeat income tax due and owing by him to the United States of America, for the calendar year 2010, by committing the following affirmative acts, among others: preparing and causing to be prepared, and signing and causing to be signed, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, in his own name, which understated Total Income and was submitted to the Internal Revenue Service; and causing the Fund to transfer money to several bank accounts in the names of the Burrill Entities, rather than to himself, with the intent to conceal his control and spending of the money on expenses not related to the Fund.

All in violation of Title 26, United States Code, Section 7201.

COUNT TWENTY-NINE: (26 U.S.C. § 7201 – Tax Evasion)

17. The factual allegations in Paragraphs 1 through 6 are re-alleged and incorporated by reference.

18. From on or about January 1, 2011, and continuing to on or about October 11, 2012, in the Northern District of California and elsewhere, the defendant,

G. STEVEN BURRILL,

did willfully attempt to evade and defeat income tax due and owing by him to the United States of America, for the calendar year 2011, by committing the following affirmative acts, among others: preparing and causing to be prepared, and signing and causing to be signed, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, in his own name, which understated Total Income and was submitted to the Internal Revenue Service; causing the Fund to transfer money to several bank accounts in the names of the Burrill Entities, rather than to himself, with the intent to conceal his control and spending of the money on expenses not related to the Fund; and making or causing false entries in the books and records of the Burrill Entities.

All in violation of Title 26, United States Code, Section 7201.

COUNT THIRTY: (26 U.S.C. § 7201 – Tax Evasion)

19. The factual allegations in Paragraphs 1 through 6 are re-alleged and incorporated by reference.

20. From on or about January 1, 2012, and continuing to on or about October 11, 2013, in the Northern District of California and elsewhere, the defendant,

G. STEVEN BURRILL,

did willfully attempt to evade and defeat income tax due and owing by him to the United States of America, for the calendar year 2012, by committing the following affirmative acts, among others: preparing and causing to be prepared, and signing and causing to be signed, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, in his own name, which understated Total Income and was submitted to the Internal Revenue Service; causing the Fund to transfer money to several bank accounts in the names of the Burrill Entities, rather than to himself, with the intent to conceal his control and

spending of the money on expenses not related to the Fund; and making or causing false entries in the books and records of the Burrill Entities.

All in violation of Title 26, United States Code, Section 7201.

COUNT THIRTY-ONE: (26 U.S.C. § 7201 – Tax Evasion)

21. The factual allegations in Paragraphs 1 through 6 are re-alleged and incorporated by reference.

22. From on or about January 1, 2013, and continuing to on or about October 10, 2014, in the Northern District of California and elsewhere, the defendant,

G. STEVEN BURRILL,

did willfully attempt to evade and defeat income tax due and owing by him to the United States of America, for the calendar year 2013, by committing the following affirmative acts, among others: preparing and causing to be prepared, and signing and causing to be signed, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, in his own name, which understated Total Income and was submitted to the Internal Revenue Service; causing the Fund to transfer money to several bank accounts in the names of the Burrill Entities, rather than to himself, with the intent to conceal his control and spending of the money on expenses not related to the Fund; and making or causing false entries in the books and records of the Burrill Entities.

All in violation of Title 26, United States Code, Section 7201.

COUNTS THIRTY-TWO THROUGH THIRTY-FOUR: (26 U.S.C. § 7206(2) – Aiding and Assisting in the Preparation of a False Tax Return)

23. The factual allegations in Paragraphs 1 through 6 are re-alleged and incorporated by reference.

24. On or about the dates set forth below, in the Northern District of California and elsewhere, the defendant,

MARC HOWARD BERGER,

did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service, of U.S. Individual Income Tax Returns, Forms 1040, of G. STEVEN BURRILL and another, for the calendar years set forth below. The returns were false and fraudulent as

to a material matter, in that they each reported Total Income below $0, as listed below, whereas, as the defendant knew, the Total Income was in excess of the amount reported:

| COUNT | APPROXIMATE DATE | CALENDAR YEAR | TOTAL INCOME (LINE 22) |
|---|---|---|---|
| THIRTY-TWO | October 11, 2012 | 2011 | -$245,870 |
| THIRTY-THREE | October 11, 2013 | 2012 | -$875,845 |
| THIRTY-FOUR | October 10, 2014 | 2013 | -$850,491 |

All in violation of Title 26, United States Code, Section 7206(2).

FORFEITURE ALLEGATION: (18 U.S.C. §§ 981(a)(1)(C) & 982(a) & 28 U.S.C. § 2461 – Criminal Forfeiture)

25. The factual allegations in Paragraphs 1 through 11 are re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a), and Title 28, United States Code, Section 2461.

26. Upon conviction of any of the offenses alleged in Counts One through Twenty-Six, the defendant,

G. STEVEN BURRILL,

shall forfeit to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a), and Title 28, United States Code, Section 2461, any property, real and personal, which constitutes or is derived from proceeds traceable to said violations.

27. If, as a result of any act or omission of the defendant, any of said property

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to or deposited with a third person;

c. has been placed beyond the jurisdiction of the Court;

d. has been substantially diminished in value; or

e. has been commingled with other property, which cannot be divided without difficulty;

any and all interest defendant has in any other property shall be forfeited to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a), and Title 28, United States Code, Section 2461.

All in violation of Title 18, United States Code, Sections 981(a)(1)(C) and 982(a), and Title 28, United States Code, Section 2461.

DATED: September 14, 2017

A TRUE BILL.

Karen Williams

FOREPERSON

ALEX TSE
Attorney for the United States,
Acting Under Authority Conferred By
28 U.S.C. § 515

Eli Dvor, for

BARBARA J. VALLIERE
Chief, Criminal Division

(Approved as to form: Robert Leach)
AUSA ROBERT S. LEACH

(Approved as to form: _____)
LORI A. HENDRICKSON
Trial Attorney, U.S. Department of Justice,
Tax Division

# UNITED STATES DISTRICT COURT
# NORTHERN DISTRICT OF CALIFORNIA

## CRIMINAL COVER SHEET

***Instructions:*** *Effective November 1, 2016, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case.*

CASE NAME: USA v. G. Steven Burrill and Marc Howard Berger

CASE NUMBER: CR 17 491 RS

| | | | |
|---|---|---|---|
| **Is This Case Under Seal?** | Yes ✓ | No | |
| **Total Number of Defendants:** | 1 | 2-7 ✓ | 8 or more |
| **Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?** | Yes | No ✓ | |
| **Venue (Per Crim. L.R. 18-1):** | SF ✓ | OAK | SJ |
| **Is this a potential high-cost case?** | Yes | No ✓ | |
| **Is any defendant charged with a death-penalty-eligible crime?** | Yes | No ✓ | |
| **Is this a RICO Act gang case?** | Yes | No ✓ | |

**Assigned AUSA (Lead Attorney):** Robert S. Leach

**Date Submitted:** 09/14/2017

**Comments:**

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