

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA : INFORMATION

- v - : 19 Cr. _____

KEITH BORGE, :

Defendant. :

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COUNT ONE

(Failure to Pay Over Payroll Taxes)

The United States Attorney charges:

BACKGROUND

1. Unless stated otherwise, at all times relevant to this Information:

a. The College of New Rochelle ("CNR") was a private college with its main campus in New Rochelle, New York. Depending on the time of year, CNR had approximately 500 to approximately 900 paid employees.

b. From in or about 2011 to in or about August 2014, KEITH BORGE, the defendant, was CNR's Vice President for Financial Affairs. From in or about August 2014 to in or about June 2016, BORGE was CNR's controller. As Vice President for Financial Affairs and as controller, BORGE had the authority required to exercise significant control over CNR's financial affairs.

c. Federal law required employers such as CNR to withhold from each employee's pay: i) federal income tax; and ii) the employee's contribution to Social Security and Medicare, unless that employee was exempt from part or all of such withholding. Employers such as CNR held withheld income tax and Social Security and Medicare contributions in trust for the United States Government. CNR was required to deposit these withheld funds, together with the employers' contributions to Social Security and Medicare for each employee (all together, "payroll taxes"), with the Internal Revenue Service ("IRS") within one week of the day it paid its employees.

d. Employers such as CNR were also required by federal law to report to the IRS: i) total wages they paid to employees; ii) the total amount of federal income tax they withheld from their employees' paychecks; and iii) the total amounts of contributions to Social Security and Medicare due from the employer, on Form 941, Employer's Quarterly Federal Tax Return, no later than the last day of the month following the end of each quarter.

e. BORGE was a responsible person under federal law for collecting, truthfully accounting for and paying over payroll taxes to the IRS.

2. From on or about July 1, 2014 to on or about

in bonds (the "1999 Bonds") through the City of New Rochelle Industrial Development Agency (the "Agency"). The proceeds of the 1999 Bonds were to be used to pay off bonds CNR issued in 1992 and to renovate CNR's library and administration building. CNR was solely responsible for payments of principal and interest on the 1999 Bonds to bondholders, which it made primarily out of its tuition revenue. As a result, investors and potential investors in the 1999 Bonds relied on CNR's ability to make payments of principal and interest on the bonds in deciding whether to buy, and how much to pay for, the bonds. CNR agreed to provide annual audited financial statements to the Agency and to the bond trustee for publication on the Electronic Municipal Market Access ("EMMA") web site maintained by the Municipal Securities Rulemaking Board ("MSRB") for review by investors and potential investors in the 1999 Bonds.

5. On or about December 3, 2015, KEITH BORGE, the defendant, submitted CNR's audited financial statements for the fiscal year ended June 30, 2015 to the MSRB for publication on EMMA. These financial statements reported total net assets of \$25 million, which BORGE caused to be overstated by at least \$24 million through the following means, among others:

a. BORGE caused the financial statements to understate CNR's liability for federal and New York State

payroll taxes by approximately \$11 million;

b. BORGE caused the financial statements to overstate accounts receivable by approximately \$9.2 million by, among other things, recognizing revenue from pledges of donations when the pledges were made and again when the donations were received;

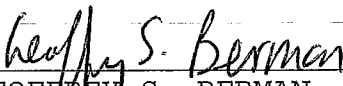
c. BORGE caused the financial statements to understate accounts payable by at least \$1.5 million by, among other things, failing to enter unpaid vendor invoices into CNR's books and records;

d. BORGE caused the financial statements to overstate investment assets by at least \$2.2 million by, among other things, recognizing investments that did not exist as assets and by failing to enter his withdrawals from CNR's investment accounts into CNR's books and records.

6. BORGE made false entries into CNR's books and records to conceal CNR's financial condition. For example, on or about August 12, 2015, BORGE made a series of entries for the fiscal year ended June 30, 2015 that: (i) falsely inflated CNR's revenues, thereby appearing to increase CNR's cash; and (ii) falsely reduced CNR's payroll tax liabilities and cash account, thereby creating the false appearance that the cash had been used to make payroll tax payments.

7. From on or about July 1, 2014 to in or about June 2016, in the Southern District of New York and elsewhere, KEITH BORGE, the defendant, knowingly and willfully, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of the 1999 Bonds, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon purchasers and sellers of the 1999 Bonds.

(Title 15, United States Code, Sections 78j(b) and 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5;
Title 18, United States Code, Section 2)



GEOFFREY S. BERMAN
United States Attorney

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(26 U.S.C. § 7202; 15 U.S.C. § 78j(b)
and 78ff; 18 U.S.C. § 2.)

GEOFFREY S. BERMAN

United States Attorney
