

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. J. Kim

Clerk

SALLIE KIM

United States Magistrate Judge

NO BAIL WARRANT

as to both

Bail, \$ _____

Sullivan

1/18

AO 257 (Rev. 6/78)

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

BY: COMPLAINT INFORMATION INDICTMENT SUPERSEDING

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.



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

DEFENDANT - U.S.

Marc Howard Berger

DISTRICT COURT NUMBER

CR 17 491 RS
DEFENDANT

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

MAGISTRATE CASE NO.

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

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

IS NOT IN CUSTODY

Has not been arrested, pending outcome this proceeding.

- 1) 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

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

Defendant Address: _____

Date/Time: _____ Before Judge: _____

Comments: _____

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

OFFENSE CHARGED

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

PENALTY: See attachment.



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

DEFENDANT - U.S.

G. STEVEN BURRILL

DISTRICT COURT NUMBER

CR 17 491 RS
DEFENDANT

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

MAGISTRATE CASE NO.

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

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

IS NOT IN CUSTODY

Has not been arrested, pending outcome this proceeding.

- 1) 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: _____

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

Date/Time: _____ Before Judge: _____

Comments: _____

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)

1 ALEX TSE (CABN 152348)
Attorney for the United States,
2 Acting Under Authority Conferred By
3 28 U.S.C. § 515
4
5

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

6 [REDACTED]
7 [REDACTED]

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN FRANCISCO DIVISION

CR 17 491

RS

11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 v.

14 G. STEVEN BURRILL and MARC
HOWARD BERGER,
15 Defendants.

) Case No. 491
) 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
)
) SAN FRANCISCO VENUE

18
19 INDICTMENT

20 The Grand Jury alleges:

21 Introductory Allegations

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

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

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

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

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

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

17 5. The LPA generally required the limited partners to make capital contributions in cash to
18 the Fund upon 10 days' written notice from the General Partner. The LPA provided that the General
19 Partner, or its designee, would be compensated for services rendered to the Fund by the payment of a
20 management fee on the first day of each fiscal quarter equal to 0.5% of the amount of committed capital
21 for six years (and then 0.5% of the cost basis of the investments, plus reserves, after the initial six years).
22 BURRILL represented to the limited partners that the General Partner was not entitled to receive any
23 fees from the Fund except as expressly provided in the LPA. BURRILL represented to the limited
24 partners that the Fund would not make an investment if the General Partner or its members or affiliates
25 had a direct or indirect economic interest in such investment, except as specifically permitted by the
26 LPA. BURRILL further represented that, to the extent sales proceeds from any investment were not
27 distributed within 30 days of their receipt by the Fund, the General Partner would deliver a written
28

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

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

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

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

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

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

25 a. BURRILL represented to limited partners that the General Partner was not
26 entitled to receive any fees from the Fund except as expressly provided in the LPA and assured limited
27
28

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

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

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

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

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

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

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

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

24 G. STEVEN BURRILL,

25 did knowingly devise and intend to devise a scheme and artifice to defraud as to a material matter and to
26 obtain money and property by means of materially false and fraudulent pretenses, representations, and
27 promises, and by omissions and concealment of material facts with a duty to disclose, and, for the
28 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.

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

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

5 G. STEVEN BURRILL,

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

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

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

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

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

21 G. STEVEN BURRILL,

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

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

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

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

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

7 G. STEVEN BURRILL,

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

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

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

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

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

22 G. STEVEN BURRILL,

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

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

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

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

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

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

9 G. STEVEN BURRILL,

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

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

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

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

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

25 MARC HOWARD BERGER,

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

1 to a material matter, in that they each reported Total Income below \$0, as listed below, whereas, as the
 2 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

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

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

11 25. The factual allegations in Paragraphs 1 through 11 are re-alleged and incorporated by
 12 reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Sections
 13 981(a)(1)(C) and 982(a), and Title 28, United States Code, Section 2461.

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

16 G. STEVEN BURRILL,

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

- 20 27. If, as a result of any act or omission of the defendant, any of said property
- 21 a. cannot be located upon the exercise of due diligence;
 - 22 b. has been transferred or sold to or deposited with a third person;
 - 23 c. has been placed beyond the jurisdiction of the Court;
 - 24 d. has been substantially diminished in value; or
 - 25 e. has been commingled with other property, which cannot be divided without difficulty;

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

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

3 DATED: September 14, 2017

A TRUE BILL.

4
5 Karen Williams
6 FOREPERSON

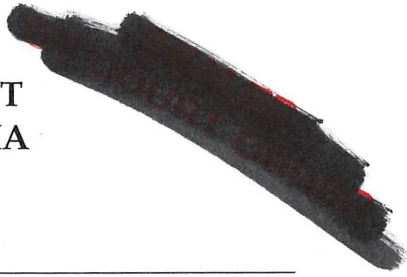
7
8 ALEX TSE
9 Attorney for the United States,
10 Acting Under Authority Conferred By
11 28 U.S.C. § 515

12 Elin Duv, for
13 BARBARA J. VALLIERE
14 Chief, Criminal Division

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

17 (Approved as to form: Lori A. Hendrickson)
18 LORI A. HENDRICKSON
19 Trial Attorney, U.S. Department of Justice,
20 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.

CR 17 491

CASE NAME:

CASE NUMBER:

USA v. G. Steven Burrill and Marc Howard Berger

CR

Is This Case Under Seal?

Yes No

RS

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: