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NR:EDP/MCM
F. #2015R01573

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

ELOZER PORGES and JOEL LOWY,

Defendants.

CR 17 00431
INDICTMENT

Cr. No. _____
(T. 18, U.S.C., §§ 981(a)(1)(C), 1341,
1349, 2 and 3551 et seq.; T. 21,
U.S.C., § 853(p); T. 28, U.S.C.,
§ 2461(c))

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THE GRAND JURY CHARGES:

GARAUFIS, J.

MANN, M.J.

INTRODUCTION

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

I. The Defendants

1. The defendant ELOZER PORGES served as the Executive Director and/or Administrator of Keren Kabinyan Hachudosh D'Rabeinu Yoel of Satmar BP, a school system located in Brooklyn, New York. Keren Kabinyan Hachudosh D'Rabeinu Yoel of Satmar BP is also known as Bais Ruchel D'Satmar, Central United Talmudic Academy, Central UTA and CUTA ("CUTA"). PORGES worked at CUTA's offices located on Rutledge Avenue, Brooklyn, New York.

2. The defendant JOEL LOWY was also employed at CUTA. LOWY worked at CUTA in an administrative capacity and his job title was variously identified in CUTA documents as "Administrative Assistant," "Assistant Director" and "Secretary."

Like the defendant ELOZER PORGES, LOWY worked at CUTA's offices located on Rutledge Avenue, Brooklyn, New York.

II. The Child and Adult Care Food Program

3. The Child Nutrition Act of 1966, consolidated and codified in Title 42, United States Code, Sections 1771 and 1751 et seq., authorizes the United States Department of Agriculture (the "USDA"), through grants to the states, to initiate, maintain and expand nonprofit food service programs for children and adults through institutions that provide social services. The Child and Adult Care Food Program (the "CACFP") is one such program. To this end, the CACFP provides funding to approved, qualifying institutions that provide meals and/or snacks consistent with the rules and regulations governing the program.

4. The USDA oversees and administers the CACFP. It fulfills its oversight function by directing individual state agencies to administer the program for CACFP-participating institutions with funds supplied by the USDA. The New York State Department of Health (the "NYSDOH") administers the CACFP in New York State.

5. Institutions that provide meals and/or snacks under the CACFP to children and adults in their care can contract directly with the NYSDOH to receive reimbursement funds. Pursuant to the contract, the institution must submit to the NYSDOH various records relating to the number of meals it has served and the NYSDOH, in turn, directly reimburses the institution for authorized expenses incurred in providing the meals.

III. The Fraudulent Scheme

6. In or about and between approximately October 2013 and December 2015, the defendants ELOZER PORGES and JOEL LOWY submitted false and misleading documents to the NYSDOH in order to fraudulently obtain reimbursement funds for suppers

purportedly served to students attending CUTA schools operating at three separate locations: (i) 762 Wythe Avenue, Brooklyn, New York (“the Wythe School”); (ii) 25 Franklin Street, Brooklyn, New York (“the Franklin School”); and (iii) 84-88 Sandford Street, Brooklyn, New York (“the Sandford School”) (collectively, the “Schools”). In fact, PORGES and LOWY sought reimbursement for suppers that had not been served.

7. On or about October 31, 2013, CUTA applied to the NYSDOH to be eligible to receive reimbursement for meals served at the Schools. These reimbursement payments were to be paid with CACFP funds. CUTA’s application indicated that supper would be served at each of the Schools five days per week—specifically, on Monday, Tuesday, Wednesday, Thursday and Sunday.

8. On or about December 31, 2013, the NYSDOH approved CUTA as a sponsoring organization within the CACFP for the Schools. This approval authorized CUTA to seek reimbursement for suppers served. CUTA and the NYSDOH entered into an agreement, effective January 1, 2014, in which CUTA agreed, among other things, to:

(1) only claim reimbursement for suppers which were served to children or adults in attendance at one of the Schools; (2) maintain a financial management system that followed generally accepted accounting principles and procedures; (3) maintain complete and accurate records, including those to support each monthly claim for reimbursement, for the past three fiscal years plus the current year; and (4) submit monthly claims for reimbursement in the manner required by the NYSDOH.

9. The defendants ELOZER PORGES and JOEL LOWY obtained authorization from Board Member #1, an individual whose identity is known to the Grand

Jury, to represent CUTA in dealings with the NYSDOH and to submit reimbursement claims and other documents to the NYSDOH.

10. The defendants ELOZER PORGES and JOEL LOWY, together with others, mailed and caused CUTA to mail monthly claims for reimbursement to the NYSDOH in Albany, New York via the United States Postal Service (“USPS”) and private commercial carriers in or about February 2014 and March 2014.

11. Specifically, on or about February 20, 2014, CUTA mailed a claim for reimbursement to the NYSDOH relating to expenses allegedly incurred in January 2014. In that claim, CUTA stated the number of days the Schools had been in operation in January 2014. The claim falsely overstated the total number of suppers that had been served at the Schools in January 2014. The defendant ELOZER PORGES signed the claim, certifying the accuracy of the information presented.

12. On or about March 10, 2014, CUTA mailed a claim for reimbursement to the NYSDOH relating to expenses allegedly incurred in February 2014. In that claim, CUTA stated the number of days the Schools had been in operation in February 2014. The claim falsely overstated the total number of suppers that had been served at the Schools in February 2014. The defendant ELOZER PORGES signed the claim, certifying the accuracy of the information presented.

13. The defendants ELOZER PORGES and JOEL LOWY, together with others, subsequently submitted and caused CUTA to submit its monthly claims for reimbursement electronically. In order to submit a monthly claim electronically, CUTA’s authorized representative, using a unique user name provided by the NYSDOH, was required to log into the NYSDOH Health Commerce System (“HCS”), an online “portal,” via the

Internet, and report the following information for a particular month: (1) the total number of days the Schools were in operation; (2) the total attendance of students at the Schools; and (3) the number of suppers served at the Schools.

14. Starting in or about April 2014, the defendant ELOZER PORGES and JOEL LOWY electronically submitted and caused CUTA to electronically submit false and misleading monthly claim reports to the NYSDOH for reimbursement, which fraudulently inflated the numbers of suppers allegedly served at each of the Schools. All electronic monthly claims for reimbursement were submitted using a user ID associated with the defendant LOWY. Specifically, LOWY, together with others, submitted and caused CUTA to submit falsely-inflated reimbursement claims to the NYSDOH for the Wythe School and Franklin School through December 2015. LOWY, together with others, submitted and caused CUTA to submit falsely-inflated reimbursement claims to the NYSDOH for the Sandford School through December 2014.

15. Each of the monthly claims submitted by the defendants ELOZER PORGES and JOEL LOWY to the NYSDOH contained false and misleading information. More specifically, PORGES and LOWY knowingly and intentionally submitted meal certifications and requests for reimbursement that substantially overstated the number of suppers that CUTA had, in fact, served to students attending the Schools.

16. As a result, in or about and between March 2014 and December 2015, the defendants ELOZER PORGES and JOEL LOWY caused the NYSDOH to provide reimbursement to CUTA under the CACFP for suppers that, in fact, had not been served to students attending the Schools. The reimbursement funds were wired from a United States Treasury account located in Kansas to a New York State Division of the Treasury bank

account at Key Bank in New York State. The State of New York then issued reimbursement checks from the New York State Division of the Treasury bank account. These reimbursement checks were mailed by USPS from Albany, New York to CUTA in Brooklyn, New York. From approximately March 2014 to February 2016, CUTA received approximately \$3,000,000 in reimbursements from the NYSDOH for suppers which ELOZER PORGES and JOEL LOWY falsely claimed had been served to students at the Schools.

COUNT ONE

(Conspiracy to Commit Mail and Wire Fraud)

17. The allegations contained in paragraphs one through 16 are realleged and incorporated as if fully set forth in this paragraph.

18. In or about and between October 2013 and December 2015, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants ELOZER PORGES and JOEL LOWY, together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud the NYSDOH and USDA, and to obtain money and property from the NYSDOH and USDA, by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, (a) to place and cause to be placed in a post office and authorized depository for mail matter, and cause to be sent and delivered by the USPS and private commercial carriers, one or more matters and things, to wit: (i) CACFP program applications submitted by CUTA for the Schools, mailed from Brooklyn, New York, to the NYSDOH in Albany, New York, (ii) the January 2014 and February 2014 reimbursement requests and meal certification forms related to suppers purportedly served at the Schools

under the CACFP program, mailed from CUTA in Brooklyn, New York, to the NYSDOH in Albany, New York, and (iii) reimbursement checks mailed via the USPS from the New York State Division of the Treasury in Albany, New York, to CUTA in Brooklyn, New York, contrary to Title 18, United States Code, Section 1341; and (b) to transmit and cause to be transmitted, by means of wire communications in interstate commerce, writings, signs, signals, pictures and sounds, to wit: (i) electronically submitted meal certifications and reimbursement requests via the online HCS Portal, and (ii) electronic requests by the New York State Division of the Treasury to the United States Treasury for CACFP reimbursement funds, contrary to Title 18, United States Code, Section 1343.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNTS TWO THROUGH FIVE

(Mail Fraud)

19. The allegations contained in paragraphs one through 16 are realleged and incorporated as if fully set forth in this paragraph.

20. On or about and between February 20, 2014 and May 16, 2014, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants ELOZER PORGES and JOEL LOWY, together with others, did knowingly and intentionally devise a scheme and artifice to defraud the NYSDOH and USDA, and to obtain money and property from the NYSDOH and USDA by means of materially false and fraudulent pretenses, representations and promises.

21. On or about the dates set forth below, for the purpose of executing such scheme and artifice, the defendants ELOZER PORGES and JOEL LOWY, together with others, did knowingly and intentionally place and cause to be placed in a post office and

authorized depository for mail matter, and cause to be sent and delivered by the USPS and private commercial carriers, according to directions thereon, one or more matters and things, to wit: (a) reimbursement requests and meal certification forms related to suppers purportedly served at the Schools under the CACFP, mailed from Brooklyn, New York, to the NYSDOH in Albany, New York, and (b) reimbursement checks mailed from the New York State Division of the Treasury in Albany, New York, to CUTA in Brooklyn, New York, as follows:

<u>Count</u>	<u>Item</u>	<u>Approximate Date of Mailing</u>
TWO	Fraudulent reimbursement request and meal certification for suppers served at the Schools	February 20, 2014
THREE	Fraudulent reimbursement request and meal certification for suppers fraudulently served at the Schools	March 10, 2014
FOUR	Reimbursement check issued by the New York State Division of the Treasury	April 11, 2014
FIVE	Reimbursement check issued by the New York State Division of the Treasury	May 16, 2014

(Title 18, United States Code, Sections 1341, 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

22. The United States hereby gives notice to the defendants that, upon their conviction of any of the offenses charged herein, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United

States Code, Section 2461(c), which require any person convicted of such offenses to forfeit any property, real or personal, constituting, or derived from, proceeds obtained directly or indirectly as a result of such offenses.

23. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (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;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

A TRUE BILL

Venoucia Webb
FOREPERSON

Bridget M. Rohde
BRIDGET M. RÖHDE
ACTING UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

No. _____

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

LOZER PORGES and JOEL LOW,

Defendants.

INDICTMENT

(T. 18, U.S.C., §§ 981(a)(1)(C), 1341, 1343, 1349, 2 and 3551 et seq.;
T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

A true bill.

Vanonica Webber

Foreperson

Filed in open court this _____ day,

of _____ A.D. 20 _____

Clerk

Bail, \$ _____

Erik Paulsen, Assistant U.S. Attorney (718) 254-6135