

SEALED BY ORDER OF THE COURT

CR 13 00201 DLJ PSG

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Filed

MAR 27 2013

SAN JOSE DIVISION

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

THE UNITED STATES OF AMERICA

vs.

ALI KASHANI and YANG ZHAO

INDICTMENT

COUNT ONE 18 U.S.C. § 1349 – Conspiracy to Commit Wire Fraud

COUNTS TWO - THREE: 18 U.S.C. § 1343 - Wire Fraud

COUNTS FOUR - FIVE: 18 U.S.C. § 1343 - Wire Fraud

COUNT SIX: 18 U.S.C. § 1957(a) - Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity

FIRST FORFEITURE ALLEGATION: 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) - Forfeiture Based on Wire Fraud

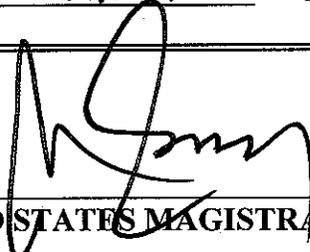
SECOND FORFEITURE ALLEGATION: 18 U.S.C. §982(a)(1) - Money Laundering Forfeiture

A true bill.



Foreperson

Filed in open court this 27TH day of MARCH A.D. 2013



UNITED STATES MAGISTRATE JUDGE

Bail. \$ No Bail Arrest Warrants

SEALED BY ORDER OF THE COURT

1 MELINDA HAAG (CABN 132612)
2 United States Attorney

3
4 **Filed**

5 MAR 27 2013

6 RICHARD W. WIEKING
7 CLERK, U.S. DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 UNITED STATES OF AMERICA,
14 Plaintiff,

No. **CR 13 00201**
VIOLATIONS:

DLJ
PSG

15 v.

18 U.S.C. § 1349 (Conspiracy);
18 U.S.C. § 1343 (Wire Fraud); 18 U.S.C. §
1957(a) (Money Laundering); and Criminal
Forfeiture

16 ALI KASHANI, and
17 YANG ZHAO,
18 Defendants.

SAN JOSE VENUE

19 **INDICTMENT**

20 The Grand Jury charges that, at all relevant times:

21 Relevant Entities and Individuals

22 1. Atlas Scientific, also called Atlas Nanotechnologies (collectively "Atlas"), was a
23 research company located in San Jose, California. Atlas was established in 1991 to conduct
24 scientific research into areas such as adhesives and carbon nanotubes.

25 2. ALI KASHANI ("KASHANI") was a resident of San Jose, and was the President
26 of Atlas.

27 3. YANG ZHAO ("ZHAO") was an employee of Atlas, and often served in the
28

INDICTMENT

1 capacity of Principal Investigator.

2 4. The Small Business Innovation Research funding program, known as SBIR, and
3 coordinated by the Small Business Administration, is a federal grant program that offers
4 scientific research grants to small business research companies. SBIR grants are awarded
5 following submission, review, and acceptance of project proposals by various federal
6 government agencies.

7 5. Every SBIR grant application must have a Principal Investigator ("PI"). A PI
8 must be primarily employed more than 50% of the time by the grantee during the course of the
9 grant.

10 6. The National Science Foundation ("NSF") and the National Aeronautics and
11 Space Administration ("NASA") fund SBIR grants.

12 7. The SBIR application process requires the electronic submission of project
13 proposals. Once a proposal is accepted and funded, the award recipient must electronically
14 submit intermittent project status reports. The funding agency relies on the recipient's electronic
15 submissions both to determine whether to fund an initial research grant proposal and whether to
16 fund later phases of research.

17 8. These project proposals and intermittent updates are submitted electronically, and
18 each federal government agency offering SBIR grants uses a different system to receive these
19 electronic submissions.

20 9. NSF uses an electronic submission system called FastLane. Electronic
21 submissions made through the FastLane system travel to FastLane computers located in
22 Arlington, Virginia.

23 10. NASA uses an electronic submission system called the Electronic Handbook
24 operated by REI. Electronic submissions made through the Electronic Handbook system travel
25 to REI computers located in Virginia and Maryland.

26 The NSF and NASA Awards

27 11. On June 12, 2006, Atlas electronically submitted an SBIR project proposal to NSF
28

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1 entitled "Dry Thermal Adhesive Based on Carbon Nanotubes." NSF awarded Atlas funding for
2 this proposal over the course of two phases. NSF granted the Phase I award, for \$99,991, for the
3 period from January 1, 2007, through June 30, 2007.

4 12. On January 31, 2008, Atlas submitted a proposal for an NSF Phase II award.
5 NSF granted the NSF Phase II award, for \$499,993, for the period from December 15, 2008
6 through, November 30, 2010.

7 13. On September 6, 2007, Atlas electronically submitted an SBIR project proposal to
8 NASA entitled "Thermally Conductive Tape Based on Carbon Nanotube Array." NASA
9 awarded Atlas funding for this proposal over the course of two phases. NASA granted the Phase
10 I award, for \$99,970, for the period from January 21, 2008, through July 21, 2008.

11 14. On July 21, 2008, Atlas submitted a proposal for an NASA Phase II award.
12 NASA granted the Phase II award, for \$599,927, for the period from February 5, 2009, through
13 August 4, 2011.

14 The Scheme to Defraud

15 15. From approximately 2008 through 2011, KASHANI and ZHAO engaged in a
16 scheme, plan, and artifice to defraud NSF and NASA, and to obtain money and property by
17 means of materially false and fraudulent pretenses, representations, and promises, through two
18 principal methods: (A) making materially false statements; and (B) failing to disclose material
19 facts. Both NSF and NASA relied on statements and representations KASHANI and ZHAO
20 made to them, when deciding to fund the SBIR grants, but only after KASHANI and ZHAO
21 made materially false statements and failed to disclose material facts to NSF and NASA.

22 16. Beginning in 2008, KASHANI and ZHAO made false and misleading statements
23 to NSF and NASA when applying for SBIR grants. KASHANI and ZHAO created the false and
24 misleading appearance that they had not submitted overlapping project proposals to NSF and
25 NASA, and were not already receiving federal grant money for overlapping research projects.

26 17. In truth, as KASHANI and ZHAO knew on or about January 31, 2008, when they
27 applied for the NSF Phase II award, they were already receiving funding pursuant to a previously
28

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1 awarded NASA Phase I award that lasted from January 21, 2008, through July 21, 2008.

2 18. In truth, as KASHANI and ZHAO knew on or about February 5, 2009, when they
3 began receiving funding under their NASA Phase II award, they were already receiving funding
4 pursuant to a previously awarded NSF Phase II award that lasted from December 15, 2008,
5 through November 30, 2010.

6 19. It was a part of the scheme to defraud that, among other conduct, KASHANI and
7 ZHAO, beginning in 2008:

8 (A) represented to NSF that “NSF is the only federal agency that has received this
9 proposal (or overlapping or equivalent proposals and awards),” when in truth, KASHANI and
10 ZHAO knew that NASA had received an overlapping proposal;

11 (B) represented to NSF that “the primary employment of the Principal Investigator
12 will be with this firm [Atlas] at the time of the award and during the conduct of the research,”
13 when in truth, KASHANI and ZHAO knew that such information was materially false in that
14 they knew ZHAO was not primarily employed by Atlas; and

15 (C) represented to NASA that no similar work had been funded by any other
16 Federal grant, contract, or subcontract, when in truth, KASHANI and ZHAO knew that NSF had
17 funded similar work.

18 COUNT ONE: 18 U.S.C. § 1349 (Conspiracy to Commit Wire Fraud)

19 20. Paragraphs 1 through 19 are realleged and incorporated as if fully set forth herein.

20 21. From in or about 2008 through in or about 2011, in the Northern District of
21 California and elsewhere, the defendants,

22 ALI KASHANI, and
23 YANG ZHAO,

24 and others known and unknown to the Grand Jury, did knowingly and intentionally conspire and
25 agree together and with each other to commit offenses against the United States, namely, wire
26 fraud, in violation of Title 18, United States Code, Section 1343, by devising a scheme and
27 artifice to obtain money by means of false and fraudulent representations, specifically by making

28 **INDICTMENT**

1 materially false statements and omitting to disclose material facts to NSF and NASA in order to
2 obtain SBIR financial award grants.

3
4 The Means and Methods of the Conspiracy

5 22. Among the means and methods by which KASHANI and ZHAO carried out the
6 conspiracy to defraud NSF and NASA were the following:

7 (A) transmitting, and causing to be transmitted, SBIR project proposals to NSF
8 and NASA that contained false and fraudulent statements and representations; and

9 (B) transmitting, and causing to be transmitted, SBIR project proposals to NSF
10 and NASA that omitted material information.

11 (C) transmitting, and causing to be transmitted, SBIR intermittent status reports to
12 NSF and NASA that contained false and fraudulent statements and representations; and

13 (D) transmitting, and causing to be transmitted, SBIR intermittent status reports to
14 NSF and NASA that omitted material information.

15 All in violation of Title 18, United States Code, Section 1349.

16 COUNTS TWO THROUGH THREE: 18 U.S.C. § 1343 (Wire Fraud)

17 23. Paragraphs 1 through 19 and 22 are realleged as if fully set forth herein.

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

20 ALI KASHANI,

21 for the purpose of executing said scheme and artifice to defraud, and for obtaining money and
22 property by means of materially false and fraudulent pretenses, representations, and promises, did
23 knowingly transmit and cause to be transmitted by means of wire communication in interstate
24 commerce certain writings, signs, signals, and pictures, that is, false and misleading SBIR project
25 proposals and intermittent status reports to NSF and NASA, as further set forth below, in
26 violation of Title 18, United States Code, Section 1343:

27
28 **INDICTMENT**

COUNT	DATE	ITEM WIRED
2	7/21/2008	On NASA Phase II Proposal, Form A, Kashani certified through REI that there is no similar work funded by any other Federal grant, contract or subcontract in this Form, citing section 3.2.4, Part 11, of the NASA SBIR solicitation.
3	12/29/2009	Kashani certified through FastLane to NSF that the primary employment of the principal investigator is with this firm, and that the research work under this project proposal has not been funded by another federal agency.

All in violation of Title 18, United States Code, Section 1343.

COUNTS FOUR THROUGH FIVE: 18 U.S.C. § 1343 (Wire Fraud)

25. Paragraphs 1 through 19 and 22 are realleged as if fully set forth herein.

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

YANG ZHAO,

for the purpose of executing said scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce certain writings, signs, signals, and pictures, that is, false and misleading claims regarding her status as the Principal Investigator on several SBIR grants to NSF, as further set forth below, in violation of Title 18, United States Code, Section 1343:

COUNT	DATE	ITEM WIRED
4	6/22/2009	Zhao falsely certified through FastLane to NSF that the Principal Investigator was primarily employed by the grantee organization and that work under the project had not been submitted for funding to another federal agency and that it had not been funded under any other grant,

INDICTMENT

		contract or subcontract.
5	12/31/2010	Zhao falsely certified through FastLane to NSF that she was primarily employed by Atlas and that the work under the project had not been submitted for funding and had not been funded by another federal agency.

All in violation of Title 18, United States Code, Section 1343.

COUNT SIX: (18 U.S.C. § 1957(a) - Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity)

27. Paragraphs 1 through 19 and 22 are realleged and incorporated as if fully set forth here.

28. On or about the dates listed below, in the Northern District of California, and elsewhere, the defendant,

ALI KASHANI,

did knowingly engage in a monetary transaction by, through, and to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, said property having in fact been derived from specified unlawful activity, namely, wire fraud:

<u>Count</u>	<u>Date</u>	<u>Amount</u>	<u>Transaction</u>
6	1/26/2009	\$124,998	Electronic funds transfer into Atlas's Wells Fargo Bank Account #0169

All in violation of Title 18, United States Code, Section 1957.

FIRST FORFEITURE ALLEGATION: 18 U.S.C. §981(a)(1)(C) and 28 U.S.C. §2461(c) (Forfeiture Based on Wire Fraud)

29. Paragraphs 1 through 19 and 22 are realleged as if fully set forth herein.

30. Upon a conviction of any of the offenses alleged in Counts One through Five, the defendants,

ALI KASHANI, and
YANG ZHAO,

INDICTMENT

1 shall forfeit to the United States all property, constituting and derived from proceeds traceable to
2 violations of Title 18, United States Code, Section 1343 (Wire Fraud); as alleged in Counts One
3 through Five of this Indictment.

4 31. If any of the forfeitable property, as a result of any act or omission of
5 KASHANI or ZHAO:

- 6 (A) cannot be located upon the exercise of due diligence;
- 7 (B) has been transferred or sold to, or deposited with, a third party;
- 8 (C) has been placed beyond the jurisdiction of the Court;
- 9 (D) has been substantially diminished in value; or
- 10 (E) has been commingled with other property which cannot be divided without
11 difficulty;

12 it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) (as
13 incorporated in Title 18, United States Code, Section 982(b) and Title 28, United States Code,
14 Section 2461(c)), to seek forfeiture of any other property of said defendants up to the value of the
15 property subject to forfeiture.

16 The forfeiture is authorized by Title 18, United States Code, Section 981(a)(1)(C) and
17 Title 28, United States Code, Section 2461(c); Title 21, United States Code, Section 853(p) as
18 incorporated by Title 18, United States Code, Section 982(b)(1); and Federal Rules of Criminal
19 Procedure 32.2.

20 SECOND FORFEITURE ALLEGATION: 18 U.S.C. § 982(a)(1) (Money Laundering
21 Forfeiture)

22 32. Upon a conviction of any of the offenses alleged in Count Six, the defendant,
23 ALI KASHANI,
24 shall forfeit to the United States all property, real or personal, involved in a violation of Title 18,
25 United States Code, Section 1957, and property traceable thereto, as alleged in Count Six of this
26 Indictment, including but not limited to any proceeds from said violations, and any property
27 which facilitated said violations.

28 **INDICTMENT**

33. If any of the forfeitable property, as a result of any act or omission of

KASHANI:

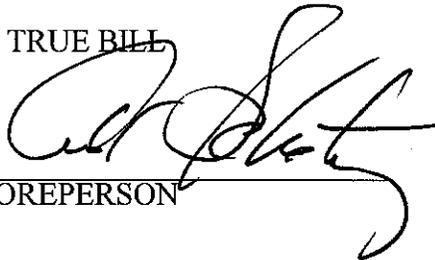
- (A) cannot be located upon the exercise of due diligence;
- (B) has been transferred or sold to, or deposited with, a third party;
- (C) has been placed beyond the jurisdiction of the Court;
- (D) has been substantially diminished in value; or
- (E) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) (as incorporated in Title 18, United States Code, Section 982(b) and Title 28, United States Code, Section 2461(c)), to seek forfeiture of any other property of said defendants up to the value of the forfeitable property described above.

The forfeiture is authorized by Title 18, United States Code, Section 981(a)(1); Title 21, United States Code, Section 853(p) as incorporated by Title 18, United States Code, Section 982(b)(1); and Federal Rules of Criminal Procedure 32.2.

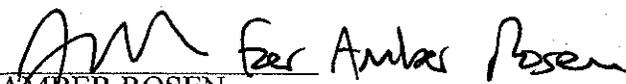
DATED: 3/27/2013

A TRUE BILL



FOREPERSON

MELINDA HAAG
United States Attorney



AMBER ROSEN
Deputy Chief, San Jose Branch Office

Approved as to form:



JEFF SCHENK
Assistant United States Attorney

INDICTMENT