

JUL 11 2003

United States District Court

NORTHERN

DISTRICT OF

CALIFORNIA

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

UNITED STATES OF AMERICA

v.

NIKOLAI TEHIN
2676 Pacific Avenue
San Francisco, CA

(Name and Address of Defendant)

SEALED
BY COURT ORDER

CRIMINAL COMPLAINT

CASE NUMBER:

3-03 30282

ME.

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about 1/31/2002 and 6/1/2001 in San Francisco county, in the Northern District of California defendant(s) did, (Track Statutory Language of Offense)

(1) on January 31, 2002, knowingly and willfully devise a scheme to defraud his clients, to obtain their money and property by means of material false and fraudulent pretenses, representations, and promises, and use the U.S. mails in furtherance of this scheme;

And the defendant did:

(2) on June 1, 2001, knowingly engage and attempt to engage in a monetary transaction by, through, or to a financial institution, affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000.

in violation of Title 18 United States Code, Section(s) 1341, 1957, and 2

I further state that I am a(n) Special Agent of the FBI and that this complaint is based on the following facts:

Official Title

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof:

Yes

No

Approved
As To
Form:

AUSA: Miles F. Ehrlich

Name/Signature of Complainant:

Special Agent Brian Weber

Sworn to before me and subscribed in my presence,

7-14-03

Date

at

San Francisco California

City and State

Maria-Elena James
United States Magistrate Judge

Name & Title of Judicial Officer

[Signature]

Signature of Judicial Officer

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Brian C. Weber, Special Agent with the Federal Bureau of Investigation (FBI) in San Francisco, California, being duly sworn, depose and state as follows:

Overview and Summary

1. A joint criminal investigation conducted by the FBI and the IRS Criminal Investigation Division has uncovered evidence that, from 2001 through 2002, NIKOLAI TEHIN, a San Francisco civil plaintiff's attorney, misappropriated, misused, and laundered several million dollars in settlement funds belonging to his clients. In view of the evidence described below, I request that the Court find that probable cause has been established and authorize a criminal complaint charging TEHIN with one count of mail fraud (18 U.S.C. §1341) and one count of money laundering (18 U.S.C. §1957).

2. As set forth below, there is probable cause to believe that TEHIN secretly misappropriated millions of dollars in settlement funds belonging to his clients in order to fund an extravagant personal lifestyle, pay off personal debts, and cover the operating expenses of his law firm, Tehin + Partners. On several occasions, TEHIN failed even to advise his clients that settlement checks had been received on their behalves, making it easier for him to embezzle funds without triggering suspicion. In addition, the bank records reveal that TEHIN engaged in Ponzi-like transfers between clients, using settlement funds received on behalf of one client to pay off other clients whose settlements he had already stolen. Finally, there is evidence that TEHIN sent a

fraudulent billing statement to one client, falsely charging the client thousands of dollars for unrelated travel expenses and for seven expert witnesses who never did any work on the client's case.

Agent Background and Sources of Information

3. I am a Special Agent of the Federal Bureau of Investigation (FBI) assigned to the San Francisco Field Office in San Francisco, California. I am the lead case agent in this investigation. I have been employed as an FBI Special Agent for approximately one year. My primary responsibilities are the investigation of public corruption and civil rights violations. Before joining the FBI, I was employed as an Assistant State's Attorney in the Cook County State's Attorney's Office in Chicago, Illinois from 1999 to 2002. During that time, I handled the investigation and prosecution of misdemeanor and felony criminal cases.

4. The facts set forth in this Affidavit are based on witness interviews I conducted and on my personal review of documents, bank records, court filings, and other tangible items I obtained as part of this investigation. I have also relied upon information that I received from many different sources, including briefings from (a) Alan Konig, Deputy Trial Counsel for the State Bar of California; (b) Special Agent Keenan Dmyterko of the Internal Revenue Service's Criminal Investigation Division; (c) other FBI Special Agents who performed work on this case; and (d) various deputy district attorneys and investigators from Alameda, San Francisco, and Napa Counties who had conducted some

investigation into this matter before it was referred to the FBI.

5. Because this affidavit is submitted for the limited purpose of obtaining a criminal complaint, I have not included every fact developed in the course of this investigation. I have, however, set forth a sufficient number of facts to demonstrate that there is probable cause to believe that NIKOLAI TEHIN committed one count of mail fraud, in violation of 18 U.S.C. §1341, and one count of money laundering, in violation of 18 U.S.C. §1957.

Background of Nikolai Tehin and Tehin + Partners Law Firm

6. NIKOLAI TEHIN was born on December 4, 1946 in Munich Germany. He received his undergraduate degree in 1969 from the University of California at Berkeley. Three years later, he earned his law degree from the University of California, Hastings College of Law. TEHIN was admitted to the practice of law in California on December 13, 1972 (State Bar No. 54678). TEHIN is married to Pamela Stevens, who is also an attorney and a member of the California Bar.

7. In 1997, TEHIN and his wife, Pamela Stevens, founded a law corporation called Tehin + Partners. The firm eventually grew to include other associate attorneys and several support staff. According to corporate and State Bar records I have reviewed, TEHIN and Stevens were the only two partners in the law firm of Tehin + Partners, as well as the corporation's sole officers and shareholders. Until the firm moved locations in late 2002, Tehin + Partners was located in San Francisco's Financial District on the

33rd Floor of the Bank of America Center, at 555 California Street. The firm primarily represented plaintiffs in litigation and earned its compensation on a contingency-fee basis. The attorneys in the firm specialized in the areas of medical malpractice, legal malpractice, personal injury, and commercial and business disputes.

8. In the course of this investigation, I have interviewed several former employees of Tehin + Partners, including both attorneys and support staff. The employees told me that, in the ordinary course of business, the firm's financial affairs were handled by TEHIN, Stevens, and the bookkeeper (who also served as the firm's office manager). Specifically, I was advised that the bookkeeper was the one who ordinarily wrote checks and conducted financial transactions on the firm's behalf, but that she did so at the direction of TEHIN, who was the primary person in charge of the firm's finances.

9. After receiving a complaint in 2002 from a client of Tehin + Partners, and then undertaking its own investigation, the State Bar of California brought a case against both TEHIN and Stevens to suspend them from the practice of law in California. As a result of this disciplinary action, on August 15, 2002, TEHIN and Stevens were both involuntarily enrolled as inactive members of the California Bar, rendering them ineligible to practice law in California. Permanent disbarment proceedings are still pending against both attorneys.

Misappropriation of Client Settlement Funds

A. Applicable Rules Regarding the Handling of Settlements and Other Client Funds

10. Under the California Rules of Professional Conduct, attorneys are required to maintain a separate bank account – usually labeled “Client Trust Account” or “Client Funds Account” – for the deposit of settlements and any other funds received or held for the benefit of clients. *See California Rules of Professional Conduct, Rule 4-100(A)*. Aside from a small amount that the attorney may place into the client trust account to cover routine bank charges, all other funds in that account are the property of the clients, and the attorney is required to properly maintain and account for such funds. *Id.* at *Rule 4-100(A)(1) and (B)(3)*. The attorney is not permitted to commingle his own funds, or those of his law firm, with those of his clients; if he does so, he has committed an unethical act and is subject to discipline, including possible disbarment. *Id.* at *Rule 4-100*.

11. Under the ethical rules, an attorney may not use or borrow any of the funds in the client trust account for his own purposes – even temporarily – and the attorney must always have the proper amount of funds available in the account to remit to his client at the appropriate time. *Rule 4-100(B)(4)* (An attorney shall “[p]romptly pay or deliver, as requested by the client, any funds . . . in the possession of the [attorney] which the client is entitled to receive”).

B. The Vintage Ranch Tenants Case

Overview of Fraud

12. Beginning in 2000, TEHIN was retained to represent a group of over 100 low-income tenants in Napa, California, who had sued the owners of their apartment buildings for maintaining sub-standard living conditions. Their lawsuit, filed in Napa County, was entitled *Association of Vintage Ranch Tenants, et. al, v. Vintage Ranch Properties, Inc., et. al.* TEHIN was brought into the case by Legal Aid of the North Bay (Legal Aid), a San Rafael-based legal assistance agency serving low-income and indigent clients. The majority of the Vintage Ranch plaintiffs were Latino farm workers and their families, many of whom spoke only Spanish. According to Legal Aid, the Vintage Ranch lawsuit was then the largest case in California history brought by tenants against a landlord for failing to keep rental housing in safe and habitable conditions.

13. In early 2001, TEHIN settled the Vintage Ranch lawsuit for \$2 million. Between March 2001 and July 2001, Tehin + Partners received settlement checks from the defendants' insurance companies and deposited these checks into the firm's client trust accounts at the Bank of America.¹ By July 31, 2001, TEHIN had received and

¹ For a short time during 2001, Tehin + Partners operated two separate trust accounts (No. 00330-031441 and No. 16647-01154) at the Bank of America. The lower-numbered account (No. 00330-31441) was closed in mid-June of 2001, with a near zero balance. All but one of the Vintage Ranch settlement checks – and the bulk of the settlement funds in the Vintage Ranch case – were deposited into Account No. 16647-01154, which remained open and active as the firm's sole client trust account during the remaining period at issue in this case.

deposited the entire \$2 million. According to the terms outlined in the retainer agreement and later detailed in an attorney's accounting statement prepared by the firm, Tehin + Partners was entitled to approximately \$391,000 for attorney's fees, plus an additional \$45,000 for costs incurred in the litigation – for a total of approximately \$436,000. In addition, Tehin + Partners agreed to give Legal Aid approximately \$261,000 out of the settlement. Thus, even assuming that the law firm was entitled to withdraw its own fees before the clients were paid, TEHIN was required under the ethical rules to keep at least \$1,303,000 in the firm's client trust account until the settlement funds were distributed to the Vintage Ranch plaintiffs. (In fact, in an attorney's accounting statement later prepared in the Vintage Ranch case, TEHIN represented that the clients were owed a total of \$1,303,333.34, after deducting for costs and fees).

14. The bank records reveal, however, that TEHIN actually converted and spent the entire \$2 million settlement on unauthorized personal and business expenses before any of the Vintage Ranch plaintiffs received any of their settlement funds. When the Vintage Ranch plaintiffs ultimately received their money, they were paid not with their own settlement funds, but with settlement funds pilfered from other clients of Tehin + Partners.

Misappropriation of Funds

15. Specifically, as noted above, TEHIN received the final installment of the \$2 million Vintage Ranch settlement on July 31, 2001. Because no client had received any

funds up to that point, TEHIN was required, under State Bar rules, to keep at least \$1,303,000 – the amount belonging to his clients – in the client trust account until the clients were paid. But by September 28, 2001, less than two months after receiving the final Vintage Ranch settlement payment, the balance in the firm’s client trust account was just \$7,171.73, meaning that Tehin + Partners had withdrawn all of the money to which it was entitled, plus nearly all of the money due to their clients. By November 30, 2001 – still nearly a month before any of the Vintage Ranch plaintiffs received any settlement funds – the balance in the firm’s trust account was just \$1,024.02.

16. Based on my review of the bank records for the firm’s trust accounts, it is apparent that TEHIN had actually begun misappropriating the Vintage Ranch settlement funds long before he received the final settlement check in July 2001. In fact, right after receiving the first Vintage Ranch settlement check, in March 2001, TEHIN began repeatedly transferring thousands of dollars out of the firm’s trust account into the firm’s general operating account (Bank of America Account No. 00336-31443). TEHIN then used the funds for personal and business expenses unrelated to the Vintage Ranch clients, such as payments to repair his 73-foot yacht and mortgage payments on his residence, a 6-bedroom, 7-bath luxury home located in the Pacific Heights area of San Francisco. As the bank records demonstrate, TEHIN had already spent most of the money he received on behalf of the Vintage Ranch plaintiffs well before he received the final settlement check, in the amount of \$100,000, at the end of July 2001.

17. For instance, as of June 1, 2001, TEHIN had received and deposited a total of \$1.9 million in Vintage Ranch settlement checks in the client trust account. On June 1, 2001, however, the firm's client trust account opened with a balance of just \$922,293.92, indicating that Tehin + Partners had already spent all of its fees and expenses, as well as over \$250,000 in funds due to the clients. Later that same day, June 1, 2001, TEHIN transferred \$247,417.78 out of the client trust account and into the firm's operating account. On June 1, 2002, TEHIN then wire-transferred from the operating account a \$237,528.78 mortgage payment on his residence to Pacific Coast Investment Company, a mortgage financing company located in Washington State. The balance in the trust account after this inappropriate use of the Vintage Ranch settlement funds was \$674,876.14, indicating that TEHIN had now stolen more than half a million from the Vintage Ranch clients.

Misrepresentations to Legal Aid and Vintage Ranch Clients

18. In approximately September 2001, Roy Chernus, the Executive Director of Legal Aid, began to grow suspicious of TEHIN's actions regarding the distribution of settlement funds. Chernus told me that in early December 2001, he set up a telephone conference call with TEHIN, Pamela Stevens, and another Legal Aid attorney to discuss why Tehin + Partners had failed to fulfill its responsibility to disburse settlement funds to the Vintage Ranch plaintiffs. The bank records indicate that, at the time of the conference call – early December 2001 – the approximate balance in the Tehin + Partners' client

trust account was less than \$2,000. As noted above, the account should have contained at least the \$1.3 million due to the Vintage Ranch clients, since none of them had yet been paid.

19. During this conference call, Chernus demanded that TEHIN and Stevens pay the Vintage Ranch clients by Christmas 2001. Many of the clients were migrant farm workers who were planning to return to Mexico during the winter off-season and who had been counting on receiving the funds beforehand. TEHIN ultimately promised Chernus that he would pay the clients by Christmas. TEHIN later arranged for Stevens to drive out to the Legal Aid office in Napa to deliver client settlement checks totaling about \$1.3 million. When Stevens arrived on December 21, 2001, however, she brought far fewer checks than had been expected. Several clients did get paid that day. But, according to witnesses who were present, many of the clients who were not given settlement checks became angry with Stevens and demanded to be paid immediately.

20. When Chernus learned in early January 2002 that Tehin + Partners had distributed only a small number of the checks due to the Vintage Ranch plaintiffs, he called TEHIN and demanded that TEHIN mail him all of the outstanding settlement checks immediately. According to Chernus, on approximately January 11, 2003, he received about \$1 million in client settlement checks from TEHIN via Federal Express. On approximately January 14, 2002, Chernus received another \$285,000 in Vintage Ranch settlement checks from TEHIN. The checks, totaling \$1,285,000, were all written

on the Tehin + Partners client trust account. The bank records reveal, however, that the trust account had only about \$207,000 in it on January 14, 2002. Moreover, the bulk of the funds in the trust account at that time were attributable to a \$196,000 deposit unrelated to the Vintage Ranch settlement made just days before, on January 9, 2002. Loan records show that this \$196,000 deposit was the proceeds of a \$200,000 home equity loan that TEHIN had taken out on their Pacific Heights home.

21. After receiving the checks from TEHIN, Chernus called the Bank of America, to inquire whether TEHIN had sufficient funds in the trust account to cover the settlement checks he had received. A bank officer told Chernus that there were not sufficient funds in the trust account to cover all of the checks in Chernus' possession. After learning this, Legal Aid filed a civil lawsuit against TEHIN, Stevens, and Tehin + Partners on behalf of the clients who had not been paid. The suit was filed in January 2002.

22. An associate attorney who was then working at Tehin + Partners told me that TEHIN called a meeting in January 2002 to discuss the newspaper accounts alleging that the firm had failed to pay the Vintage Ranch clients. According to the associate, TEHIN dismissed the allegations at the meeting, stating in substance that the Legal Aid lawyers were "goody two-shoes who were freaking out over nothing."

23. Shortly after the Legal Aid lawsuit was filed, TEHIN sent letters directly to each of the unpaid Vintage Ranch clients. One of these letters, dated January 31, 2002,

was sent to a Vintage Ranch plaintiff who was still owed \$11,700. The letter read as follows:

"Dear [Name Redacted]:

You may have heard or read recent local newspaper reports claiming that you cannot collect your share of the settlement funds in this lawsuit from our law firm. These reports are not true. I am afraid that our relationship with Legal Aid of the North Bay is no longer working, and that Legal Aid is attempting to disrupt the orderly procedures for distribution of the settlement funds that my law firm established in this case to protect your interests.

Please call our office directly at (415) 951-8800 as soon as possible so that we can make the necessary arrangements for you to promptly receive an important informational package and your settlement funds.

We are looking forward to hearing from you.

Very Truly Yours,
Nikolai Tehin"

The day before this letter was dated, the balance in the Tehin + Partners client trust account was \$274.

24. This Vintage Ranch client made repeated complaints to Tehin + Partners during the first week in February 2002, and ultimately threatened to report them to the police and to the media if the money was not forwarded to her account as promised. Tehin + Partners eventually paid the client the funds she was owed, on approximately February 11, 2002, but only after TEHIN had secured a \$200,000 personal loan from Newport Federal Financial, which TEHIN deposited into the firm's client trust account and used to make this payment.

25. In March 2002, with many of the Vintage Ranch plaintiffs still unpaid, Legal Aid staged a public protest in front of Tehin + Partners' office. Nearly a dozen of the unpaid Vintage Ranch clients marched in front of the building at 555 California Street holding signs with slogans such as:

“TAKING MONEY FROM THE POOR, SHAME ON YOU
NICK TEHIN AND PAM STEVENS”

and

“BANK RECORDS DON'T LIE, YOU TOOK OUR
CLIENT TRUST FUND.”

Several of these placards are currently in the FBI's possession.

26. According to individuals at Legal Aid, TEHIN eventually paid off most of the unpaid Vintage Ranch plaintiffs in late March and April 2002. The last Vintage Ranch plaintiff was finally paid in July 23, 2002. The bank records reveal that the bulk of the money that was used to pay the Vintage Ranch plaintiffs came either from personal loans secured by TEHIN or from settlement checks TEHIN received on behalf of other clients unrelated to the Vintage Ranch case.

C. Lawsuit on Behalf of the McCoys

27. In 2000, TEHIN was retained to represent James and Molly McCoy in a medical malpractice action arising out of severe neurologic injuries sustained by their son during his birth at Alta Bates Medical Center. The McCoy's baby son was delivered without appreciable respiration or heart rate. After being declared dead, baptized, and

placed on his mother's chest, he began to gasp for air. Their lawsuit, entitled *McCoy et.al. v. Alta Bates Medical Center, et al.*, was filed in Alameda County Superior Court on June 30, 2000. The McCoy's alleged that the doctors and other hospital staff failed to provide proper delivery and post-delivery care.

28. On November 27, 2001, the court approved a compromise settlement with one of the defendants, Kaiser Permanente, for \$250,000. The court's order specifically provided that \$154,813.14 of this payment "shall be held in trust pending further hearing by this court for an order establishing a Special Needs Trust" for the McCoy's son. A special needs trust is typically established when the recipient of a legal settlement or judgment is a minor, or another individual, who lacks the legal capacity to deal with financial matters. Once the trust is established, a trustee is appointed to handle the disbursement of funds on the minor's behalf. The trustee is ordinarily required to obtain court approval before expending any of the funds deposited into the special needs trust.

29. On January 15, 2002, TEHIN received a \$250,000 settlement check from Kaiser made payable to Tehin + Partners for the benefit of the McCoy's son and his guardian ad litem, Rebecca Moore. Accompanying the check was a letter addressed to TEHIN from Kaiser's attorney, which stated in part:

This will memorialize our agreement today wherein we agreed as part of finalizing the settlement of this matter that we would deliver the settlement draft in the amount of \$250,000.00. We further agreed that the check would not be cashed at this time, but rather would be deposited in your trust account, and would not be cashed until after the Superior Court

granted Kaiser's motion for determination of good faith settlement. Further, we agreed that in the event the motion is denied, the settlement draft will be returned.

30. TEHIN caused the McCoy's check to be deposited into the firm's client trust account the same day he received this letter, January 15, 2002. Within three weeks of this deposit, TEHIN had spent the entire \$250,000 belonging to the McCoy's. But according to the McCoy's, neither TEHIN nor anyone else from Tehin + Partners ever notified them that their settlement check had even been *received* in the first place until about May or June of 2002 – long after their funds had already been spent.

31. By January 30, 2002, approximately two weeks after TEHIN deposited the \$250,000 check on the McCoy's behalf, the balance in the firm's client trust account was just \$274.19. As of that date, TEHIN had neither released any of the \$250,000 settlement to the McCoy's, nor even notified them that their settlement check had been received. In fact, as is apparent from the bank records, TEHIN used most of the McCoy settlement funds to pay off a number of Vintage Ranch plaintiffs who had been waiting to receive their share of the settlement proceeds from their own case.

32. James McCoy advised me that, during the summer of 2002, he became aware that TEHIN and Stevens were under investigation by the State Bar for mishandling client funds. When McCoy confronted TEHIN over the telephone about the Bar investigation and the status of his son's settlement funds, TEHIN dismissed the Bar's investigation, saying that the only thing he might have done wrong is "mismanaged

money a little bit."

33. To date, the McCoys have not received any of their settlement funds from TEHIN or his law firm. In an effort to obtain their money, the McCoys filed a civil lawsuit against TEHIN and Stevens and a claim for reimbursement from a fund managed by the State Bar to provide restitution to clients who have been victimized by their attorneys. The civil lawsuit is currently pending.

D. Lawsuit on Behalf of Two Children Born with Cystic Fibrosis

34. Beginning in approximately 2000, TEHIN was retained to represent two infant children afflicted with cystic fibrosis, along with their father and guardian ad litem, in a medical malpractice action brought against a San Francisco fertility center. The lawsuit was filed in San Francisco Superior Court in January 2001. The family has asked that their identities remain confidential.

35. On or about March 26, 2002, the family agreed in principle to settle the case against one of the individual defendants, a doctor, for \$1 million. On March 29, 2002, pursuant to that agreement, TEHIN obtained a \$1 million check made out to the parents, as guardians ad litem for their minor children, and to "their Attorney of Record, Nikolai Tehin." The accompanying letter, addressed to TEHIN, instructed TEHIN that he was only permitted to negotiate the check on his clients' behalves after the clients had executed a "Release of All Claims" against the doctor and a "Request for Dismissal" of their lawsuit against him.

36. On the day TEHIN received the \$1 million check, however, TEHIN caused it to be deposited into his firm's trust account without his clients' knowledge and without the required endorsement from the father of the children. An employee at the Bank of America told me that she approved the deposit of this \$1 million check into the firm's client trust fund without the necessary endorsement, and that she was later fired for doing so.

37. According to a cost accounting statement prepared by Tehin + Partners, the infant children (and their parents as guardians) were entitled to receive \$682,154 of this \$1 million settlement, after deducting for attorneys' fees and litigation costs. This money was supposed to be placed in a special needs trust established separately for each of the children, so it could be used to pay for the medical costs associated with treating cystic fibrosis. Nevertheless, within just a few weeks of the deposit of their funds, TEHIN had used nearly all of the children's funds either to pay off clients from the Vintage Ranch case, or for other unauthorized business and personal expenses.

38. Specifically, the bank records from the client trust account show that, before the clients' \$1 million settlement check was deposited on March 29, 2002, the balance in the trust account was just \$3,318.33. With the deposit, the balance increased to \$1,003,318.33. Over the next several weeks, however, TEHIN used approximately \$300,000 of these settlement funds to pay Vintage Ranch clients who had not yet been paid.²

² As noted above, many of the unpaid Vintage Ranch clients had become increasingly angry and vocal during the Spring of 2002. According to former employees of

39. In April and early May 2002, TEHIN also funneled more than \$430,000 of the client family's settlement funds into the firm's general account, where he used the funds for various business and personal expenses. By May 7, 2002, just five weeks after TEHIN deposited the \$1 million check for the infant children into the client trust account, the balance in the account dropped to just \$97,756.21 – indicating that Tehin + Partners had spent all of the fees and costs to which it was entitled and stolen almost \$600,000 of the funds due and owing to the clients he had been hired to represent.

40. According to the father of the infant children, in late March or early April of 2002, TEHIN repeatedly tried to pressure him to sign the settlement release. But TEHIN never mentioned to him that he had already received and deposited their settlement funds. The children's father told TEHIN that he was reluctant to sign the settlement release because he objected to language absolving the defendant of fault. He said that he felt TEHIN was trying to "bully" him into signing the release, and that TEHIN continued to pressure him into signing the release as late as June 2002.

41. On June 7, 2002, the children's father learned of the State Bar's investigation of TEHIN and also learned, for the first time, that their \$1 million settlement check had been negotiated and spent by the Tehin + Partners law firm without his consent. Shortly thereafter, the father confronted TEHIN over the telephone. During the phone call, Tehin denied the allegations and tried to assure him that his money was

Tehin + Partners, in addition to their public demonstration outside the firm's office building, Vintage Ranch clients had also been calling and visiting the office with increasing frequency during this time, demanding payment of their settlement funds.

“safe.” On the day of this phone call, however, the balance in the firm’s client trust account was just \$29,386.42. To date, the family of the children with cystic fibrosis have never received any funds from TEHIN or from anyone else at the Tehin + Partners law firm. They have now filed a civil lawsuit against TEHIN and Stevens alleging embezzlement, conversion, and intentional infliction of emotional distress, among other grounds, and seeking special damages in the amount of \$1 million, which represents the family’s portion of the settlement plus the disgorgement of any fees and costs otherwise due to Tehin + Partners. In addition, the family has filed an action with the State Bar seeking restitution from the State Bar’s Client Security Fund.

42. In TEHIN’s answer to the family’s lawsuit, TEHIN denied that they sustained any loss or damage and asserted twenty-one affirmative defenses, including comparative negligence, assumption of the risk, and consent.

E. Lawsuit on Behalf of Nancy Ferry

43. Beginning in 1998, TEHIN represented Nancy Ferry in a medical malpractice action relating to the death of Ferry’s daughter while under the care of medical professionals. According to Ferry, her case settled for \$200,000 in December 2001.

44. According to the bank records, which I have reviewed, Ferry’s \$200,000 settlement check was deposited into the Tehin + Partners trust account on January 31, 2002, when the balance in account was just \$274.19. That same day Tehin + Partners wrote checks totaling over \$60,000 to six Vintage Ranch clients. And over the course of

the next seven days, TEHIN used the rest of Ferry's settlement (along with most of the proceeds of a \$40,000 personal loan TEHIN deposited into the trust account) to pay off another fifteen Vintage Ranch clients. On February 6, 2003, a week after Ferry's settlement check was deposited, the balance in the trust account had dropped to just \$9,171.19.

45. Ferry told me that, from about January through April 2002, she called Tehin + Partners every month seeking the status of her settlement funds. Ferry finally reached TEHIN by telephone in approximately January or February 2002. During this telephone conversation, TEHIN told Ferry that he had not received her settlement check yet and explained to Ferry that he had called the defendants "fifty times" and that they were "awful people to deal with." Over the next couple of months, Ferry kept calling Tehin + Partners to find out when she would be receiving her settlement funds, but each time she was forced to speak with Tehin + Partners support staff, who told her that TEHIN and Stevens were out of the office and unavailable to speak with her. Ferry finally spoke to TEHIN again by telephone in approximately April 2002. TEHIN told Ferry that he had "just received" her settlement check. This conversation occurred more than two months after TEHIN had spent all of Ferry's settlement funds.

46. In late May 2002, Ferry received a settlement check in the mail from Tehin + Partners in the amount of \$103,864.47. The check was marked as "Full & Final settlement" and it was accompanied by a document entitled "Statement of Costs," which purported to summarize the costs that had been incurred in her case as of December 2,

2001.

47. Ferry told me that she had expected her portion of the settlement to be larger than the check she received from Tehin + Partners. Ferry was particularly suspicious about the fees supposedly paid out of her settlement funds to seven expert witnesses who were listed on the cost statement. Over the next few months, Ferry contacted each of the seven expert witnesses listed on the cost statement, and each expert told her that they had never performed any work on Ferry's case. Some of the experts had never even heard of the Tehin + Partners law firm. Others told Ferry that they had worked with the firm on other cases, but not on Ferry's.

48. In November 2002, I interviewed one of the experts who was listed on Ferry's cost statement myself. The expert told me that she testifies primarily for plaintiffs in medical malpractice cases. When asked about the Ferry case, the expert told me that she does not know TEHIN or Stevens and that she has never performed any services for the Tehin + Partners law firm.

49. The State Bar of California examined the validity of the Ferry cost statement as part of its overall investigation into the misappropriation of client funds at Tehin + Partners. In addition to questioning the expert witness fees, the State Bar also questioned the decision to charge Ferry \$1,940.32 for a weekend stay at the Four Seasons Resort in Newport Beach, California. This bill included over \$500 in room service and "private bar" charges.

50. On January 2, 2003, TEHIN filed an affidavit in response to the State Bar's

inquiry into the Ferry cost statement, in which he declared under penalty of perjury, that: "With respect to the Ferry v. Board of Regents, I did not review the cost statement which was submitted to Dr. Ferry before it was forwarded to her and have no personal knowledge concerning the circumstances surrounding the final accounting and distribution of funds." Attached to this affidavit was a "Second Amended" attorney's accounting statement for the Ferry case, which removed all charges relating to the seven expert witnesses who performed no work on the Ferry case and the weekend trip to Newport Beach.

51. In the "Second Amended" accounting statement that TEHIN submitted to the State Bar, TEHIN acknowledged that Tehin + Partners actually owed Ferry a total of \$132,344.46 – nearly \$30,000 more than the \$103,864.47 "full and final" settlement check she was sent in May 2002. Ferry told me that she still has not received the additional money owed to her. Ferry has filed an application with the State Bar seeking reimbursement from the Bar's Client Security Fund. The State Bar has issued a tentative decision granting Ferry's request for reimbursement of funds falsely billed to her by Tehin + Partners.

F. Continuing Investigation Into Other Misappropriated Settlements

52. In addition to the allegations set forth above, this investigation has uncovered evidence that, during 2001 and 2002, TEHIN, acting with the assistance of others at Tehin + Partners, stole and misused hundreds of thousands of dollars in funds that TEHIN received on behalf of at least seven other clients not mentioned above. The

investigation into these allegations is continuing.

Summary of Applicable Law

53. ***Mail Fraud.*** Based on my training and experience, I am familiar with the offense of mail fraud under 18 U.S.C. §1341. In particular, I am aware that according to Ninth Circuit Model Criminal Jury Instruction 8.101, the essential elements of mail fraud are as follows:

- First, that the defendant made up a scheme or plan for obtaining money or property by making false promises or statements;
- Second, that the defendant knew that the promises or statements were false;
- Third, that the promises or statements were material, that is they would reasonably influence a person to part with money or property;
- Fourth, that the defendant acted with the intent to defraud; and
- Fifth, that the defendant used, or caused to be used, the mails to carry out or attempt to carry out an essential part of the scheme.

I am also aware that, under the governing law (as described in the Model Jury Instruction), a mailing is caused when one knows that the mails will be used in the ordinary course of business or when one can reasonably foresee such use. It does not matter whether the material mailed was itself false or deceptive so long as the mail was used as a part of the scheme, nor does it matter whether the scheme or plan was successful or that any money or property was obtained.

54. ***Money Laundering.*** I am also familiar with the offense of money laundering, in violation of 18 U.S.C. §1957. Although the Ninth Circuit has not

published a Model Criminal Jury Instruction for this offense, I am familiar with case law interpreting 18 U.S.C. §1957 and with approved instructions in other circuits. In short, the essential elements of this offense are as follows:

- First, that the defendant knowingly engaged or attempted to engage in a monetary transaction;
- Second, that the defendant knew that the transaction involved criminally derived property;
- Third, that the criminally derived property involved in the transaction had a value of greater than \$10,000;
- Fourth, that the transaction occurred in the United States; and
- Fifth, that the transaction involved the use of a financial institution that is engaged in interstate or foreign commerce.

The term “monetary transaction” includes the deposit, withdrawal, or transfer of funds. And the term “criminally derived property” means any property constituting, or derived from, proceeds obtained from a criminal offense. Although the government must prove that at least \$10,000 of the property at issue was criminally derived property, the government does not have to prove that all of the property at issue was criminally derived.

The Charged Counts in the Criminal Complaint

55. Based on the facts set forth above, as applied to applicable law, I submit there is probable cause to believe that NIKOLAI TEHIN committed one count of mail fraud in violation of 18 U.S.C. §1341 and one count of money laundering in violation of 18 U.S.C. §1957. As a result, I am seeking a criminal complaint that charges TEHIN with the following two counts:

• **COUNT ONE:** The United States charges that, on or about January 31, 2002, in the Northern District of California and elsewhere, NIKOLAI TEHIN knowingly and willfully devised and intended to devise a scheme and artifice to defraud his clients in the case of *Association of Vintage Ranch Tenants, et. al, v. Vintage Ranch Properties, Inc., et. al.*, Case No. 26-07635, filed in Napa County, California, and to obtain their money and property by means of material false and fraudulent pretenses, representations, and promises, and that, for the purpose of executing this scheme and artifice to defraud, TEHIN caused to be placed in a post office and authorized depository for mail a letter from him to one of his clients to be sent and delivered to the client by the United States Postal Service. *See infra* at ¶ 23. (A violation of 18 U.S.C. §§ 1341 and 2).

• **COUNT TWO:** The United States charges that, on or about June 1, 2001, in the Northern District of California and elsewhere, NIKOLAI TEHIN did knowingly engage and attempt to engage in a monetary transaction by, through, or to a financial institution, affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000, specifically a wire transfer in the amount of \$237,528.78 from Bank of America Account No. 00336-31443 to Pacific Coast Investment Company, a mortgage financing company located in Washington State. *See infra* at ¶ 17. (A violation of 18 U.S.C. §§ 1957 and 2).

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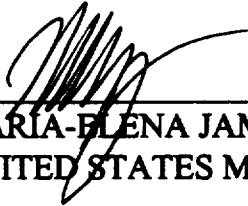
ATTESTATION

The above facts are true and correct to the best of my knowledge and belief.



BRIAN WEBER
Special Agent
Federal Bureau of Investigation

SWORN AND SUBSCRIBED TO BEFORE ME
THIS 14 DAY OF JULY, 2003



MARIA-ELENA JAMES
UNITED STATES MAGISTRATE JUDGE