

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
UNITED STATES OF AMERICA

United States of America,
Ex Rel. Dale Thomas Vosika
and Rob Thompson,

Plaintiffs,

**SECOND AMENDED
VERIFIED COMPLAINT AND
DEMAND FOR JURY TRIAL**

vs.

Court File No. 01-709 DWF/SRN

Starkey Laboratories, Inc.,

Defendant.

Plaintiffs, for their Second Amended Complaint, state under oath as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to the Federal False Claims Act, 31 U.S.C. § 3729-3733, and, more specifically § 3732, and this action is not barred by § 3730(e).

JURY DEMAND

2. Plaintiff requests that the matter be heard by a jury.

BACKGROUND

3. Plaintiff Rob Thompson has been employed by Starkey Laboratories, Inc. (hereinafter referred to as "Starkey"), from April 1991 to September 1993 as an Account Executive. In that capacity, he was responsible for maintaining the existing account base while attracting new accounts. From September of 1993 through September of 1999, he was employed by Starkey as a Financial Management Services Representative. From April 1996 through

September 1999, he was the Director. In that capacity, he performed business consultations of Starkey accounts. He was also responsible for handling due diligence on financing requests from Starkey accounts. From September of 1999 to September 2000 he was the Operations Manager of Five Star Audiology. In that capacity, he was responsible for the development of a new program at Starkey aimed at increasing market share with audiologists. From October 2000 to present, he is the marketing program manager. He is responsible for market research and developing a business education program for the dealers. Plaintiff Thompson was not responsible for setting prices or policies during the contract period, and he had no control over the sales methods or pricing practices of Starkey.

4. Plaintiff Dale Vosika was employed by Starkey from September 10, 1979 until September 25, 1999, or over 20 years. During his employment, Plaintiff held a variety of jobs for Starkey. In recent years, Plaintiff was Director of Facility Services and was involved in cost cutting procedures for Starkey. In that position, he dealt with various vendors, suppliers and customers in an effort to reduce Starkey costs, or otherwise increase its profit. In that position, Plaintiff had access to all information concerning sales of the Defendant's products, including the cost of the sales, rebates, and all other information concerning sales. Plaintiff was not responsible for setting prices or policies and he had no control over the sales methods or pricing practices of Starkey.

5. Starkey is a Minnesota corporation with its principal place of business at 6700 Washington Avenue South, Eden Prairie, Minnesota. Starkey is a manufacturer and retailer of hearing aids, accessories, parts and supplies.

6. Starkey sells various types of hearing aid products. The products are available in several sizes, and within each size category, there are numerous types of hearing aids available depending upon the type of electronic circuitry and design features of the particular hearing aids. The size is determined by how much of the hearing aid is inserted into the ear canal and

therefore is less visible rather than being external to the hearing canal and more visible. In general, the smaller or less visible the hearing aid, the higher the price of the hearing aid. As relevant to this action, there are five (5) types of hearing aids at issue.

7. Starkey entered into a contract with the Department of Veterans Affairs. The contract was V791P-0047. The contract period was October 1, 1994 through September 30, 1996. The contract was entered into on behalf of Starkey on September 27, 1994 by Richard Handberg, who was the Divisional Manager of Starkey. That contract was amended on March 21, 1996 to extend the term of the contract until September 30, 1997. The amendment was signed by Richard Handberg on behalf of Starkey.

8. The contract V791P-0047 between the Department of Veterans Affairs and Starkey contains the following provision:

"Price Reduction Clause (I-FSS-390): For the purpose of the Price Reduction Provisions, this contract is predicated on the Government receiving terms better than the terms you offer to your dealers (dispensers)."

The VA has been delegated authority by the General Services Administration to award and administer multiple awards schedule contracts for healthcare supplies and services.

As is common in schedule contracts, prior to commencing contract negotiations Starkey and other contractors wishing to provide hearing aids are required to submit discount schedule and marketing data disclosing the best discounts offered to its most favored customers for the same products offered to the government. The discount schedule and marketing data assists the government in negotiating fair and reasonable prices. To protect its negotiated discounts and assure the VA maintains a generally superior most favored customer pricing throughout the life of the contract, the contract contained a Price Reduction Clause. The Price Reduction Clause required Starkey to provide the VA with price reductions, or increased discounts when it granted price reduction or increased discounts to customers.

9. The contract provided pricing terms and conditions as agreed to for purchase of the following hearing aid products:

CE 9	\$148.73
CE H9	\$197.72
CE L9	\$161.23
SA C9	\$229.08
SA S9	\$274.07

10. Starkey would extend to all customers a first year warranty on a hearing at no additional cost. There is a cost for a second year warranty. The contract with the Veterans Administration and Starkey provided pricing terms and conditions for the second year warranties as follows:

30 percent discount for the second year warranty. The commercial price of the second year warranty is \$34.99. The net price on this contract is \$24.49. The price of \$24.49 is included on the above models.

Accordingly, the prices as listed in paragraph 9 above for the five categories of hearing aids included the second year warranty. Had a second year warranty not been purchased as an option by the VA, the price of the five categories of hearing aids purchased by the VA would be as follows:

CE 9	\$124.24
CE H9	\$173.23
CE L9	\$136.74
SA C9	\$204.59
SA S9	\$249.58

11. The prices as forth above applied during the entire term of the contract period of October 1, 1994 through September 30, 1996, which was amended to extend the term of the contract until September 30, 1997.

12. During the contract period and extension referred to above, Starkey sold to the Department of Veterans Affairs hearing aids in all five of the categories referenced above. The sales were accounted for by Starkey with several different account numbers as designated by Starkey. The largest number of sales occurred in account #G0100 and were as set forth in the attached Exhibit 1. Additional sales were made in the other accounts, to which Petitioners do not have the records. It is believed that these sales, other than in account #G0100, were in excess of 50,000 units, and the exact number is subject to an accounting.

13. That the contract between the Department of Veterans Affairs and Starkey as referenced is a fixed price contract, which is not subject to adjustment by reason of cost of performance, and Starkey is obligated to perform the contract at the established price.

14. Starkey sells a very limited number of products directly to the public. Rather, sales of Starkey products are sold to various commercial customers who then resell the products to the consumer. Starkey does not maintain a franchise sales program or retail sales outlet. The Department of Veterans Affairs is one of many customers for the products of Starkey.

15. Starkey has failed to rebate to the Department of Veterans Affairs the applicable price reductions which occurred during the contract period and extension thereof with the Department of Veterans Affairs.

16. That at all times applicable to this Complaint, William F. Austin was the sole owner of Starkey. That the intent of Austin was to manage the company in a "unit driven" manner so as to try and sell as many hearing aids possible, even if the sale of those hearing aids were below cost. The strategy adopted by William Austin was to increase market share, and try to drive competitors from the market. William Austin was involved in the day to day affairs of

Starkey during the contract period. That Jerry Ruzicka was the Vice President of Manufacturing, and also replaced William Austin as the President during the contract period. That Jim Bremer is the Vice President of Credit, and was responsible for implementing price schedules for various accounts. Dick Handberg signed the contract with the government, and the extension thereof, and negotiated all VA prices with the government. The Managing Directors for Starkey included Frank Ring, David Richard, Paul Burris, Randy Schoenborn, Roy Bain, Cathy Jones, Harlan Conkey, Jeff Longtain, Larry Meyers and Brandon Dawson. These Managing Directors would have negotiated and approved the pricing with the customers of Starkey other than the VA, including Trinity Hearing Aid Company and Evan Hearing Aid Center. The Sales Representatives would have included Cary Dawson and Henry Cook. They would have negotiated the prices for the hearing aids with customers of Starkey other than the VA. Their negotiations for the price would have been subject to approval by Managing Directors for customers other than the VA, which would have included Trinity Hearing Aid Company and Evans Hearing Aid Center.

17. That during the period of the contract and extension as referenced above, Starkey also sold hearing aid products to many different companies, which included the following:

--Evans Hearing Aid Center, 2657 Nottingham Way, Mercerville, NJ 08619. This account was designated by Starkey as Account No. X0943.

--Trinity Hearing Aid Company, 2129 Ardmore Blvd., Pittsburgh, PA 15221. Trinity Hearing Aid Company was designated by Starkey as account numbers X4018 and E1780.

--Lakes Hearing Aid Center, 751 Stokes Road, Medford, NJ (Account #E2040).

--Associated Hearing Aid Centers, 6716 Market Street, Upper Darby, PA (Account #X0698).

--Lisa Blackman (Account #I3097).

--Professional Hearing Aid Service (Account #X7141), West New York, NJ.

--SAAD Hearing Aid Service, Philadelphia, PA (Account #X0988).

Starkey did not have written contracts with Trinity or Evans for the purchase of hearing aid products. Rather, the contracts were negotiated orally, and the basis of the pricing for the purchase of hearing aids would have been negotiated by Frank Ring and Cary Dawson. Mr. Ring was the Managing Director. Mr. Ring reported directly to Mr. Austin. Cary Dawson was the Sales Representative who reported to Ring. The pricing for the various hearing aid products would have been negotiated between Frank Ring and Cary Dawson in regard to Evans Hearing Aid Centers with Robert and John Evans, the owners. The pricing for the hearing aids sold to Trinity would have been negotiated by Frank Ring and Cary Dawson with George Fyke, the owner of Trinity Hearing Aid Company. Mike Reha was the Credit Representative. Ring and Dawson would have instructed Reha to enter the prices in the computer mainframe at those levels which were negotiated by Ring and Dawson.

18. Starkey, in a specific attempt to boost sales to commercial customers and avoid its obligations under the contract with the government continued to implement during the government's contract several discount programs. These discount programs were known to William Austin, Jerry Ruzicka, Dick Handberg, and the Managing Directors and sales persons and Starkey customers as "Starkey math". Discounts were categorized as "AD" discount and a "QD" discount. The "Starkey math" was used so that it was difficult for customers and for some sales representatives of Starkey to determine the actual price which was to be paid by a customer, other than the VA, for a Starkey hearing aid product because these discounts were not applied in a uniform manner for the customers of Starkey. William Austin, Frank Ring, Cary Dawson and Mike Reha understood the complexity of the scheme which was adopted in connection with the sales of Starkey products to Trinity Hearing Aid Center and George Fyke, who is the owner of Trinity. The manner of giving the "QD" and "AD" discounts was adopted so that it would be very difficult for someone who was not intimately aware of the scheme to understand the true

pricing that was being provided to Trinity Hearing Aids, for hearing aid products similar to those sold to the VA by Starkey.

19. Prior to the contract with the VA which commenced on October 4, 1994, Starkey sold hearing aid products to Trinity Hearing Aid Company, who supplied hearing aids to the members of the United Steelworkers of America, AFLCIO, District 15, Local Union #1219, 1070 Braddock Avenue, Braddock, PA 15104. The program between the union and Trinity was instituted on December 10, 1992 by Don Thomas, the President of the local United Steelworker Union. On that date, the union announced a hearing aid benefit program with Trinity Hearing Aid Company. The program eliminated the deductible for all members who have major medical through Blue Cross. George Fyke had negotiated the transaction directly with Don Thomas. In an effort to sell Starkey hearing aids to Trinity Hearing Aid Company for members of the United Steelworkers of America, Local Union 1219, Starkey conspired with George H. Fyke to increase the cost of the list price that Trinity Hearing Aid Company would pay to Starkey for the hearing aid products. By doing so, Trinity Hearing Aid would then provide hearing aids to members of the United Steelworkers who received reimbursement for the hearing aid from Blue Cross. The ultimate victim of this scheme was Blue Cross, who overpaid for the cost of the hearing aids purchased by members of the local union who had insurance coverage through Blue Cross. The scheme was initially negotiated by Ring and Dawson with George H. Fyke, the President and owner of Trinity Hearing Aid Company, and then approved by William Austin, President/CEO of Starkey. The sale of products were to be made by Starkey to Trinity, and then the cost of the sales would be reflected on an invoice. The invoice would then be used by Trinity to support reimbursement from Blue Cross. However, a series of discounts or credits would be later issued by Starkey to Trinity which were not shown on the sales invoice by Starkey to Trinity. Those credits would be issued in a manner that made it difficult to establish the actual price paid by Trinity for a particular hearing aid. The scheme to defraud Blue Cross was in existence at the

time that the VA contract was entered into on October 1, 1994. The scheme between Starkey and George Fyke to defraud Blue Cross continued throughout the term of the contract with the Veterans Administration, and extension. In late 1995, the scheme was acknowledged to exist by Jim Bremer, who at the time was the Vice President of Credit, directly to Rob Thompson, Plaintiff herein.

20. One discount program was designated by Starkey as a "QD" discount. Another part of the "QD" program was designated as an "AD" discount. The QD discount represented a "quantity discount", and the AD discount represented an "actual discount". These discounts were not to be applied to the individual invoices which were sent to Trinity at the time of the sale of each hearing aid product. Rather, the discounts were to be deducted from statements which were sent by Starkey to Trinity every 28 days. These statements would reconcile all of the individual sales made during the 28 day statement period, and then would apply to the various discounts which would be applicable during the statement period to arrive at the final price paid for the hearing aids during the statement period to be paid by Trinity for all hearing aids sold during a particular statement period.

21. Trinity, as well as other customers of Starkey, would also be offered various "tanks". During the contract period with the VA and the extension, Starkey had a program called the "Ambassador Program", otherwise referred to by Starkey as "tanking" or "supertanking". This "tanking" allowed Starkey's most favorite customers to receive substantial rebates from Starkey in certain areas. One of the tanks involves a "efficiency tank". Starkey's favorite customers would receive discounts or rebates if their return rate for the hearing aids was low. The amount depended on the return rate percentage. The Department of Veterans Affairs' return rates during the contract period were approximately three percent (3%), which is the lowest return rate of any of Starkey's customers. Nevertheless, the Department of Veterans Affairs did not receive any "tanking" or rebate as did Starkey's most favorite customers.

22. Another “tanking” program offered by Starkey included a “battery tank” by which quantities of batteries are given to favorite customers, but not the VA.

23. Starkey also had a “equipment tank” for its most favorite customers, by which it supplied substantial amounts of equipment at a discount. The same “tank” was not provided to the Department of Veterans Affairs as was given to Starkey’s most favorite customers. The result of the “tanking” is that Starkey’s most favorite customers, including Trinity and Evans, received better terms for the purchase of hearing aids from Starkey than did the Department of Veterans Affairs. The intent of the “tanking programs” is to evade the requirements of the contract that Starkey has with the Department of Veterans Affairs not to sell any of the similar products sold to the Veterans Administration at a price less than that which it sells to its most favorite customers. Generally, anywhere from 50 percent to 100 percent of the purchase price of batteries or equipment was placed in respective tanks later to be used as a discount on hearing aid purchases. Plaintiffs herein do not have the computer records of Starkey to show that such “tanking” discounts were given to Trinity by Starkey. However, the discounts were confirmed to exist by Jim Bremer, Vice President of Credit, directly to Plaintiff Rob Thompson in late 1995. Also, on June 29, 2001, Reha personally told Rob Thompson that during the contract period with the VA that Cary Dawson would automatically replenish the “efficiency tank” for Trinity after it was low.

24. Mike Reha, the Credit Representative for Starkey, was required to implement the pricing. Mr. Reha would receive calls from the vendors, including Trinity, who were trying to understand what the cost was that these companies were paying for individual hearing aids. Because of the complexity of the discounts, billings to the customers became so confusing that it was difficult, if not impossible, even for the customer, to determine what price was being paid for an individual hearing aid. The contract with the government which is the subject of this action began on October 1, 1994. However, prior to the October 1, 1994 contract, Starkey had a

contract with the government to sell hearing aids. Sometime in late 1992 or 1993, well before the negotiations with the government for the contract which started on October 1, 1994, Mr. Reha, in response to a concern of George Fyke about the complexity of the pricing to Trinity, prepared a document to inform George Fyke as to the price actually being paid for hearing aid products by Trinity. The document is attached hereto as **Exhibit 2**. That document is one page of a multi page document provided to George Fyke which listed all of the categories of hearing aids which were sold to Trinity. Exhibit 2 regards only the "9 series" hearing aids, which were the same series of hearing aids which were to be later purchased by the VA during the contract period of October 1, 1994 through termination of the contract on September 30, 1997. The prices as referenced in Exhibit 2 remained in effect until February 1, 1998. Attached as **Exhibit 3** is a memorandum from Starkey which showed effective February 1, 1998 that there were to be "new discounts for hearing aids for accounts #E1780 and #X4018", which was Trinity Hearing Aid Company. Frank Ring, Cary Dawson and William Austin had knowledge of the "Fyke formula", and the prices which were paid by Trinity Hearing Aid which were below the VA cost during the negotiations of, and at the time of the signing, of the VA contract of October 1, 1994, and were aware that Trinity was being provided pricing below the VA cost during the entire contract period with the VA.

25. The products sold to Trinity did not include the second year warranty which was included in the government's purchase price at a cost of \$24.49. The price designated for a CE9 sold to Trinity was \$105.98, and the VA paid \$124.24 (\$148.73 - \$24.49). The price of the CE L9 to Trinity was \$105.98, and to the VA was \$136.74 (\$161.23 - \$24.49). The price of a CE H9 to Trinity was \$95.98, and to the VA was \$173.23 (\$197.72 - \$24.49). The price of a SA C9 to Trinity was \$165.98, and to the VA was \$204.59 (\$229.08 - \$24.49). The price of a SA S9 to Trinity was \$205.97, and to the VA was \$249.58 (\$274.07 - \$24.49).

26. That Dale Vosika specifically witnessed incidents during the contract period with

the VA that William Austin would be told that sales were being made below the VA pricing to Trinity, as well as other customers. Vosika had a very close personal, as well as business, relationship with William Austin, and as a result thereof, Vosika would have frequent discussions with Austin concerning both business and personal matters. That the topic of sales below VA pricing during the term of the contract with the VA would often be discussed with Vosika, and Vosika would often overhear discussions that Austin would have with employees in the company, including Dick Handberg, Jerry Ruzicka, Jim Bremer, Brandon Dawson, Mike Bastyr, Eric Peterson, Al Bruce, Renee Raines, Larry Greely, Dale Thorstad and Rick Baran, regarding pricing of the products below the VA cost. Vosika overheard conversations during the contract period and extension regarding the VA pricing between William Austin and Dick Handberg where Handberg said that the likelihood of the VA auditing Starkey was "very small", and that he could "talk his way out of it" if an audit occurred.

27. That Frank Ring, Cary Dawson, Mike Reha and Jerry Ruzicka, and William Austin, Mike Jones, Dick Handberg, and other employees of Starkey, engaged in a conspiracy to defraud the United States Government of the benefit of the contract to provide the government with the price reduction provisions of the contract, which was predicated upon the government receiving terms better than the terms offered to Starkey's dealers. Jerry Ruzicka helped implement the programs to deceive the government. Jim Bremer, Vice President of Credit, helped implement the pricing schedules for all accounts. Mr. Bremer was directly responsible for processing the credits to Trinity and other accounts, which are listed as the "QD" and "AD" discounts off of the statements. He knew that the purpose of doing this was to specifically defraud the government. Jim Bremer also managed all "tanking" programs. He implemented and managed all "advance purchase discounts" which are discussed below. Dick Handberg, who signed the contracts with the VA, was aware at the time that he signed the contract with the VA in October of 1994 that sales were being made to Trinity Hearing Aid Company below the VA

cost, and that the sales below the VA cost were likely to continue throughout the contract period with the VA. Nevertheless, Handberg continued to approve all sales to the VA during the contract period. During the contract period with the VA, Handberg caused to be developed a computer program on the mainframe for the Starkey computer to identify sales below the government price. The name of the program was "keep Dick out of jail". The existence of this program was told by Handberg directly to Rob Thompson on August 17, 2001 in Handberg's office.

28. That during the term of the contract with the VA, that Starkey had approximately 6,000 active accounts. Vosika and Thompson attempted to sample data from the Trinity account to verify that Trinity was being sold products below the VA price, and that there was consistency in the sales to Trinity in accordance with Exhibit 2, which was referred to as the "Fyke formula". They reviewed the account statements which would be issued every 28 days to Trinity, and then would select at random some of the sales which readily appeared to identify sales below the VA cost. Vosika and Thompson did not have access to the actual sales invoices. The invoices would have been stored on microfiche or optical disc, and were unavailable to Vosika and Thompson. Rather, they were able to determine the pricing of an individual hearing aid by reviewing the computer records for the history of the hearing aid. These records were maintained for the purpose of warranty claims, and contained much of the information which would be listed on a sales invoice. However, the process of reviewing the history information is much more cumbersome than the actual review of the invoice, which would readily show the prices being sold below the VA cost. In regard to the Trinity account, a sampling occurred during the period of November 1994 to September 29, 1997. The results are shown on the following chart. Trinity was not provided with second year warranties. The government paid \$24.49 for a second year warranty. Therefore, \$24.49 was subtracted from the price of the government's hearing aid, and the resulting price is listed in the chart under the "VA price":

Date	Bill To (Account)	Invoice	Type	Starting Price	Quantity Discount (QD)	Quantity Discount (AD)	Options	Shipping	Net Price	VA Price	Difference
12/29/94	X4018	N196602	TN L9	391.9	140	50	84.98	0	116.97	136.7	19.77
12/29/94	X4018	N196602	TN L9	414.9	140	50	84.98	6.99	132.99	136.7	3.75
2/1/95	X4018	N219374	TN C9	426.9	100	110	49.99	6.99	159.99	204.5	44.60
2/2/95	X4018	N220156	TN C9	434.4	100	110	57.49	6.99	159.99	204.5	44.60
2/8/95	X4018	N224049	TN S9	426.9	100	120	0	6.99	199.98	249.5	49.60
2/8/95	X4018	N224049	TN S9	419.9	100	120	0	0	199.98	249.5	49.60
6/26/95	X4018	N319006	TN S9	426.9	100	120	0	6.99	199.98	249.5	49.60
6/26/95	X4018	N319006	TN S9	419.9	100	120	0	0	199.98	249.5	49.60
7/3/95	X4018	N324763	TN C9	434.4	100	110	57.49	6.99	159.99	204.5	44.60
7/3/95	X4018	N324763	TN C9	427.4	100	110	57.49	0	159.99	204.5	44.60
7/5/95	X4018	N325722	TN S9	476.9	100	120	49.99	6.99	199.98	249.5	49.60
8/2/95	X4018	N346539	TN C9	434.4	100	110	57.49	6.99	159.99	204.5	44.60
8/2/95	E1780	N346538	TN S9	476.9	100	120	49.99	6.99	199.98	249.5	49.60
9/27/95	X4018	N388088	TN C9	436.9	100	110	59.98	6.99	159.99	204.5	44.60
11/22/95	X4018	N430319	TN C9	426.9	100	110	49.99	6.99	159.99	204.5	44.60
11/22/95	X4018	N430319	TN C9	419.9	100	110	49.99	0	159.99	204.5	44.60
12/20/95	X4018	N450678	TN S9	476.9	100	120	49.99	6.99	199.98	249.5	49.60
12/20/95	X4018	N450678	TN S9	469.9	100	120	49.99	0	199.98	249.5	49.60
1/11/96	X4018	N461109	TN C9	434.4	100	110	57.49	6.99	159.99	204.5	44.60
1/11/96	X4018	N461109	TN C9	427.4	100	110	57.49	0	159.99	204.5	44.60
4/23/96	X4018	N537894	TN C9	426.9	100	110	49.99	6.99	159.99	204.5	44.60
6/17/96	X4018	N579919	TN C9	436.9	100	110	59.98	6.99	159.99	204.5	44.60
6/17/96	X4018	N579919	TN C9	429.9	100	110	59.98	0	159.99	204.5	44.60

6/21/96	X4018	N583952	TN L9	376.9	140	50	69.99	6.99	109.98	136.7	26.76
7/10/96	X4018	N596064	TN C9	426.9	100	110	49.99	6.99	159.99	204.5	44.60
7/23/96	X4018	N606177	TN 9	316.9	140	50	20	6.99	99.99	124.2	24.25
7/23/96	X4018	N606177	TN 9	309.9	140	50	20	0	99.99	124.2	24.25
7/29/96	X4018	N610328	TN C9	427.4	100	110	57.49	0	159.99	204.5	44.60
7/29/96	X4018	N610328	TN C9	434.4	100	110	57.49	6.99	159.99	204.5	44.60
10/11/96	X4018	N668794	TN L9	374.4	140	50	67.49	6.99	109.98	136.7	26.76
10/11/96	X4018	N668794	TN L9	367.4	140	50	67.49	0	109.98	136.7	26.76
10/16/96	X4018	N672454	TN 9	367.4	140	50	77.49	0	99.99	124.2	24.25
10/16/96	X4018	N672454	TN 9	374.4	140	50	77.49	6.99	99.99	124.2	24.25
11/6/96	X4018	N688914	TN C9	444.4	100	110	67.48	6.99	159.99	204.5	44.60
11/21/96	X4018	N701522	TN C9	456.9	100	110	79.99	6.99	159.99	204.5	44.60
11/21/96	X4018	N701065	TN C9	434.4	100	110	57.49	6.99	159.99	204.5	44.60
1/6/97	X4018	N729445	TN C9	434.4	100	110	57.49	6.99	159.99	204.5	44.60
1/23/97	X4018	N742610	TN C9	444.4	100	110	67.48	6.99	159.99	204.5	44.60
1/23/97	X4018	N742609	TN C9	444.4	100	110	67.48	6.99	159.99	204.5	44.60
3/6/97	X4018	N776206	TN 9	354.9	140	50	57.49	6.99	100.49	124.2	23.75
3/26/97	X4018	N792158	TN C9	426.9	100	110	49.99	6.99	159.99	204.5	44.60
3/28/97	X4018	N793600	TN C9	426.9	100	110	49.99	6.99	159.99	204.5	44.60
3/28/97	X4018	N793603	TN C9	426.9	100	110	49.99	6.99	159.99	204.5	44.60
4/14/97	E1780	N807084	TN 9	366.9	140	50	69.99	6.99	99.99	124.2	24.25
4/14/97	E1780	N807084	TN 9	359.9	140	50	69.99	0	99.99	124.2	24.25
4/14/97	X4018	N807083	TN C9	419.9	100	110	49.99	0	159.99	204.5	44.60
4/14/97	X4018	N807083	TN C9	426.9	100	110	49.99	6.99	159.99	204.5	44.60
7/10/97	X4018	N877393	TN C9	426.9	100	110	49.99	6.99	159.99	204.5	44.60
7/30/97	X4018	N893712	TN L9	386.9	140	50	79.98	6.99	109.98	136.7	26.76
8/21/97	X4018	N912950	TN 9	366.9	140	50	69.99	6.99	99.99	124.2	24.25
8/28/97	X4018	N917617	TN C9	426.9	100	110	49.99	6.99	159.99	204.5	44.60
9/11/97	X4018	N928565	TN 9	376.9	140	50	79.98	6.99	99.99	124.2	24.25

9/11/97	X4018	N928565	TN 9	369.9	140	50	79.98	0	99.99	124.2	24.25
9/25/97	X4018	N940553	TN C9	426.9	100	110	49.99	6.99	159.99	204.5	44.60
9/29/97	X4018	N942757	TN S9	546.9	100	120	119.9	6.99	199.98	249.5	49.60
9/29/97	X4018	N942757	TN S9	539.9	100	120	119.9	0	199.98	249.5	49.60

29. Plaintiffs herein also had the opportunity to sample the sales of hearing aids by Starkey to Evans Hearing Aid Center for the period of October 1994 through February 1996. The sampling was performed on the account records of Evans in the same manner as done with Trinity. However, unlike Trinity which did not purchase second year warranties, Evans' customers would sometimes purchase second year warranties, and sometimes not. They would also purchase three year and other extended warranties. The sampling was more difficult with the Evans account because of the inclusion of the warranty information. A review of the individual sales invoices from the microfiche maintained by Starkey would enable one to clearly determine the number of sales of particular hearing aids which took place below the VA price with second year warranties included in the sales to Evans. However, from the sampling data performed by Plaintiffs, they were able to identify the following sales occurring at the start of the contract period in 1994. Sales for subsequent years would show sales below cost to Evans during the entire contract period. The initial contract price to Evans was not artificially inflated as it was to Trinity and part of the scheme to defraud Blue Cross. However, the "QD" and "AD" discounts would also be given to Evans, as well as various tanking discounts. Plaintiffs do not have access to the computer information to confirm the tanking discounts, but they know that these discounts exist because in late 1995 Jim Bremer, the VP of Credit at Starkey, confirmed that Evans, as well as other accounts, received the tanking discounts. Identified sales to Evans in 1994 are summarized as follows:

Date	Bill To (Account)	Invoice	Type	Starting Price	Discount/Credit	Discount/Credit 2	Discount/Credit 3	Options	Shipping	Net Price	VA Price	Difference	Notes
10/10/94	X0943	N140703	SA C9	311.96	85.00			49.99	6.99	169.9	229.08	59.10	Includes 2nd year warranty
10/10/94	X0943	N140703	SA C9	304.97	85.00			49.99	0	169.9	229.08	59.10	Includes 2nd year warranty
9/21/94	X0943	N125709	SA C9	311.96	135.00	10		0	6.99	159.9	229.08	69.11	Includes 2nd year warranty
12/14/94	X0943	N188093	SA C9	311.96	115.00			49.99	6.99	139.9	229.08	89.10	Includes 2nd year warranty
12/14/94	X0943	N188093	SA C9	304.97	115.00			49.99	0	139.9	229.08	89.10	Includes 2nd year warranty
9/26/95	X0943	N386751	CE 9	129.99	20.00			20	0	89.99	124.24	34.25	
10/6/94	X0943	N138832	SA S9	439.95	120.00	24.99		134.9	0	159.9	274.07	114.09	Includes 2nd year warranty
10/3/94	X0943	N135506	CE 9	264.96	40.00			89.98	0	134.9	148.73	13.75	Includes 2nd year warranty
10/3/94	X0943	N135506	CE 9	251.96	65.00			69.99	6.99	109.9	148.73	38.75	Includes 2nd year warranty

30. As evidence of the pervasiveness of the sales to customers of Starkey below the VA price, Vosika and Thompson sampled some of the other account statements of Starkey customers. They obtained some records of accounts with the same Sales Representative and Managing Director who would have been involved in negotiating the sales of hearing aids to Trinity. Those individuals were Frank Ring and Cary Dawson. During the term of the contract with the VA, Starkey had approximately 6,000 active accounts. The computer mainframe program developed by Dick Handberg entitled "keep Dick out of jail", would be able to identify all sales made during the contract period with the VA to any Starkey customers which were below the contract price. Vosika and Thompson do not have access to that program. However, the sales to Trinity and Evans were not isolated instances. Sales to other customers of Starkey who were handled by Sales Representatives connected with the Trinity and Evans accounts were: Lakes Hearing Aid Center, 751 Stokes Road, Medford, NJ (Account #E2040); Associated Hearing Aid Centers, 6716 Market Street, Upper Darby, PA (Account #X0698); Lisa Blackman (Account #I3097); Professional Hearing Aid Service (Account #X7141), West New York, NJ; SAAD Hearing Aid Service, Philadelphia, PA (Account #X0988) occurred during the contract period at prices below the VA price. Plaintiff did not have access to all records of these companies, but were able to randomly sample the sales and found the following sales at below the VA cost:

Date	Account	Invoice	Type	Starting Price	Discount/Credit	Discount/Credit 2	Options	Shipping	Net Price	VA Price*	Difference
11/4/94	X7141	N161019	CE 9	177.9			55.99	6.99	114.99	124.2	9.25
12/2/94	X7141	N179829	CE L9	181.9			39.99	6.99	134.98	136.7	1.76
1/22/96	X7141	N468052	CE 9	245.9	75		119.9	6.99	43.99	124.2	80.25
1/5/96	X7141	N458181	CE 9	140.9			39.99	6.99	93.99	124.2	30.25
10/13/94	X7141	N143677	CE 9	177.9			55.99	6.99	114.99	124.2	9.25
10/14/94	X7141	N145014	CE 9	171.9			49.99	6.99	114.99	124.2	9.25
10/27/94	X7141	N154437	CE 9	177.9			55.99	6.99	114.99	124.2	9.25
12/5/96	X5842	N710384	TT S9	226.9				6.99	219.98	249.5	29.60
12/5/96	X5842	N710384	TT S9	219.9				0	219.98	249.5	29.60
2/27/96	X5842	N495341	TT 9	126.9	119.99			6.99	0.00	124.2	124.24
12/30/97	I3097	N015897	SA S9	171.9				6.99	164.98	249.5	84.60
12/28/94	I3097	N195852	SA S9	166.9				0	166.97	249.5	82.61
12/28/94	I3097	N195852	SA S9	249.9				6.99	242.99	249.5	6.59
9/29/97	E2040	N942742	CE 9	156.9			39.99	6.99	109.99	124.2	14.25
1/16/97	E2040	N737208	CE 9	44.71			39.99	0	4.72	124.2	119.52
1/4/95	X0698	N198059	SA S9	206.9				6.99	199.98	249.5	49.60
9/13/95	X0698	N376232	CE 9	116.9				6.99	109.99	124.2	14.25
9/13/95	X0698	N376232	CE 9	109.9				0	109.99	124.2	14.25
5/31/96	X0698	N567497	SA S9	229.9			31.98	6.99	190.98	249.5	58.60
12/11/95	X0988	N443307	CE 9	196.9			69.99	6.99	119.99	124.2	4.25
12/11/95	X0988	N443307	CE 9	189.9			69.99	0	119.99	124.2	4.25

*If a second year warranty was purchased, the full VA price was listed. If it was not, the VA price was reduced by \$24.49.

31. Besides the discounts on the sales of hearing aids after the hearing aids were purchased, Starkey also offered to customers of Starkey “advanced purchase discounts”. The purpose of the “advanced purchase discounts” was to evade the requirements of the Price Reduction Clause in the contract between Starkey and the Department of Veterans Affairs. Many such contracts existed during the contract period with the Veterans Administration. The Plaintiffs herein were only able to locate two of such written agreements. Attached hereto as **Exhibit 4** is an agreement between Starkey and Hearing Aid Centers, Inc. The agreement was signed by William F. Austin, President of Starkey Laboratories, both in his corporate capacity, as well as individually. Alan L. Farris, signed the contract in the corporate capacity on behalf of Hearing Aid Centers, Inc., as well as individually. Under said terms, Starkey paid to Farris \$750,000 upon signing the contract. The contract concerned pricing to Hearing Aid Centers for some identical products sold by Starkey to the Department of Veterans Affairs. In accordance with the contract, Alan L. Farris and Hearing Aid Centers, Inc., was provided an “advanced discount”. The repayment of the \$750,000 would be done by subtracting from the sales invoices price certain credits, including \$100 to an “advanced purchase discount”, \$100 to a “equipment discount”, \$100 to a “promotion on account”, as well as the other discounts referenced in the agreement. The resulting sales after these and other credits were deducted were below the VA price.

32. Attached hereto as **Exhibit 5** is an agreement dated January 1, 1997 between William F. Austin, President of Starkey, and in his individual capacity, and between A&B Hearing Aid and Audiology Center by Bert Farris, President, as well as Farris individually. The contract is similar to that entered into with Hearing Aid Centers, Inc., with the exception that the advanced discount was \$375,000, and the number of hearing aids to be purchased. However, in the other respects, the agreement was a “form agreement” which provided that A&B would purchase the hearing aids from Starkey at the “customary price”, and then credits of up to \$300

per hearing aid would be subtracted from the obligation by A&B to repay the “purchased discount in advance”. This scheme was specifically adopted by William Austin in an attempt to obligated A&B to do business with Starkey for an extended period of time and not to have A&B do business with hearing and other manufacturers, and at the same time to evade the requirements of the contract with the VA, which was Starkey’s largest customer. The resulting sales to A&B after the credits were deducted were below the VA price.

33. On each occasion that Starkey submitted a bill during the contract period and the extension thereof to the Department of Veterans Affairs, said bill would have been a false and fraudulent claim for payment of approval. Richard Handberg had signed the VA contracts, and negotiated the VA pricing. Mr. Handberg specifically approved of, and had knowledge of, the accounts to which sales of products were made during the contract period with the VA at a price substantially less than that paid by the VA, including Trinity, Evans, and many other customers. William Austin, President of Starkey; Mike Jones, VP of Starkey; Jerry Ruzicka, VP and later President of Starkey; as well as Frank Ring, Managing Director for Starkey who reported directly to William Austin; Cary Dawson, Sales Representative; and Mike Reha, Credit Representative; all were specifically aware that during the entire contract period with the VA that the bills submitted to the VA were false and fraudulent billings in that those bills were for amounts in excess of those amounts due under the contract between Starkey and the Veterans Administration. Starkey, in those billings, failed to provide the government reimbursement of sales made to customers of Starkey which were below the VA prices. Said failure to reimburse the VA did not occur by oversight, but rather was a scheme adopted by the owner of Starkey, William Austin, and other principal managing officers of Starkey, to specifically defraud the government of the amounts due to the government in accordance with the Price Reduction Clause in the Veterans Administration contract with Starkey. Each request submitted by Starkey for payment constituted a false record or statement to get a false claim paid or approved by the

Department of Veterans Affairs, and that Starkey knowingly submitted said fraudulent claims, all as prohibited by 31 U.S.C. § 3729(a)(1), 31. U.S.C. § 3729 (a)(2) and 31 U.S.C. § 3729 (a)(3).

The false fraudulent bills submitted by Starkey to the VA were done on the following dates and for the following amounts:

BILLING PERIOD	AMOUNT OF BILL
10-8-94 through 11-4-94	\$526,927.98
11-5-94 through 12-2-04	\$502,332.74
12-3-94 through 12-30-94	\$453,712.56
12-31-94 through 1-27-95	\$524,479.06
1-28-95 through 2-24-95	\$583,391.63
2-25-95 through 3-24-95	\$569,865.91
3-25-95 through 4-21-95	\$580,138.24
4-22-95 through 5-19-95	\$589,862.59
5-20-95 through 6-16-95	\$532,717.79
6-17-95 through 7-14-95	\$606,393.73
7-15-95 through 8-11-95	\$723,772.08
8-12-95 through 9-8-95	\$687,298.73
9-9-95 through 10-6-95	\$761,532.48
10-7-95 through 11-3-95	\$781,019.14
11-4-95 through 12-1-95	\$764,808.52
12-2-95 through 12-29-95	\$700,846.18
12-30-95 through 1-26-96	\$573,870.30
1-27-96 through 2-23-96	\$720,279.24

2-24-96 through 3-22-96	\$562,248.71
3-23-96 through 4-19-96	\$543,768.46
4-20-96 through 5-17-96	\$537,057.58
5-18-96 through 6-14-96	\$561,150.07
6-15-96 through 7-12-96	\$637,292.63
7-13-96 through 8-9-96	\$642,044.34
8-10-96 through 9-6-96	\$709,869.47
9-7-96 through 10-4-96	\$819,282.93
10-5-96 through 11-1-96	\$855,147.73
11-2-96 through 11-29-96	\$825,896.95
11-30-96 through 12-27-96	\$821,987.13
12-28-96 through 1-24-97	\$791,633.76
1-25-97 through 2-21-97	\$983,542.30
2-22-97 through 3-21-97	\$1,071,078.14
3-22-97 through 4-18-97	\$1,104,409.23
4-19-97 through 5-16-97	\$1,144,561.16
5-17-97 through 6-13-97	\$1,172,060.93
6-14-97 through 7-11-97	\$1,180,669.94
7-12-97 through 8-8-97	\$1,321,322.29
8-9-97 through 9-5-97	\$1,267,606.26
9-6-97 through 10-3-97	\$1,254,834.09
10-4-97 through 10-31-97	\$2,027,288.60
11-1-97 through 11-28-97	\$1,292,216.40
11-29-97 through 12-31-97	\$1,657,655.22
1-1-98 through 1-30-98	\$1,312,793.04

1-31-98 through 2-27-98	\$1,545,599.93
2-28-98 through 3-27-98	\$1,754,479.43
Total:	\$39,580,745.62

34. In accordance with 31 USC § 3729(a) these damages are trebled.

35. In accordance with 31 USC § 3729(a), a civil penalty is imposed for each act in violation of the False Claims Act. The penalty should be applied to the sale of each hearing aid by Starkey to the government. That amount will be in excess of 95,000 in account G0100 alone.

36. In accordance with 31 USC § 3730(d) Plaintiffs are entitled to their attorneys fees and costs.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

1. In the amount of \$39,580,745.62, plus treble damages, penalties, interest and attorneys fees for sales in account number G0100.
2. An accounting for sales in accounts other than G0100.
3. All other relief as provided for under the False Claims Act.

WARCHOL, BERNDT & HAJEK, P.A.

Dated: 4/19/, 2004

By _____
Robert J. Hajek, Esq. #39512
Attorneys for Plaintiff
3433 Broadway Street N.E. #110
Minneapolis, MN 55413-1783
Telephone: (612) 331-4211

VERIFICATION

STATE OF MINNESOTA)
 : ss.
COUNTY OF HENNEPIN)

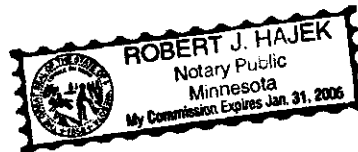
Dale Vosika, being first duly sworn on oath, deposes and says that he is one of the Plaintiffs in the foregoing proceedings; that he has read the foregoing Second Amended Verified Complaint and Demand for Jury Trial and knows the contents thereof and that the same is true of his own knowledge.



Dale Vosika

Subscribed and sworn to before
me this 19 day of March, 2004.

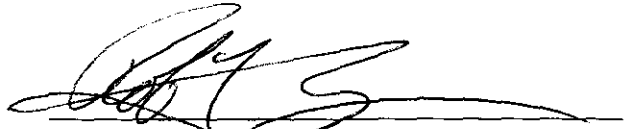
Notary Public



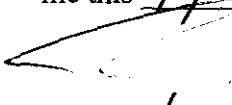
VERIFICATION

STATE OF MINNESOTA)
 : ss.
 COUNTY OF HENNEPIN)

Rob Thompson, being first duly sworn on oath, deposes and says that he is one of the Plaintiffs in the foregoing proceedings; that he has read the foregoing Second Amended Complaint and Demand for Jury Trial and knows the contents thereof and that the same is true of his own knowledge.


 Rob Thompson

Subscribed and sworn to before
 me this 19 day of March, 2004.



 Notary Public

