

UNITED STATES DISTRICT COURT

for the District of Minnesota

In the Matter of the Search of:

INFORMATION STORED IN THE SERVERS THAT ARE ASSOCIATED WITH THE E-MAIL ADDRESS: Geronimo\_275@hotmail.com, THAT IS STORED AT PREMISES CONTROLLED BY MICROSOFT CORPORATION.

INVESTIGATIVE FILED - UNDER SEAL

Case No. 16mj 495 (TTNL)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Western District of Washington:

See Attachment A

The person or property to be searched, described above, is believed to conceal:

See Attachment B

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before August 5, 2016 (not to exceed 14 days)

in the daytime 6:00 a.m. to 10 p.m. x at any time in the day or night as I find reasonable cause has been established.

You must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge Becky R. Thorson.

Date and Time issued: July 22, 2016, 10:40 A.M. Tony N. Leung Judge's Signature

City and State: St. Paul, MN Tony N. Leung, U.S. Magistrate Judge Printed Name and Title

<b>Return</b>		
<i>Case No.:</i>	<i>Date and time warrant executed:</i>	<i>Copy of warrant and inventory left with:</i>
<i>Inventory made in the presence of :</i>		
<i>Inventory of the property taken and name of any person(s) seized:</i>		
<b>Certification</b>		
<i>I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.</i>		
<i>Date:</i> _____	<i>Executing officer's signature</i> _____	
<i>Subscribed, sworn to, and returned before this date.</i>	<i>Printed name and title</i> _____	
_____ <i>U.S. Judge or Magistrate Judge</i>	_____ <i>Date</i>	

## ATTACHMENT A

### **Property to Be Searched**

This search warrant applies to information associated with the email account Geronimo\_275@hotmail.com that is stored at premises controlled by Microsoft Corporation, a company that accepts service of legal process at 1 Microsoft Way, Redmond, Washington 98052-6399. This warrant requires Microsoft to provide all information within the possession, custody, or control of Microsoft, including any emails, records, files, logs, communications, or information that has been deleted but is still available to Microsoft through the date of the execution of the search warrant.

## ATTACHMENT B

### Particular Things to be Seized

#### **I. Information to be disclosed by Microsoft (the “Provider”)**

To the extent that the information described in Attachment A is within the possession, custody, or control of the Provider, including any emails, records, files, logs, or information that has been deleted but is still available to the Provider, or has been preserved pursuant to requests made under 18 U.S.C. § 2703(f) on April 11, 2016, and July 7, 2016, the Provider is required to disclose the following information to the government for each account or identifier listed in Attachment A:

- a. The contents of all e-mails associated with the account, including stored or preserved copies of e-mails sent to and from the account, draft e-mails, the source and destination addresses associated with each e-mail, the date and time at which each e-mail was sent, and the size and length of each e-mail;
- b. All records or other information regarding the identification of the account, to include full name, physical address, telephone numbers and other identifiers, records of session times and durations, the date on which the account was created, the length of service, the IP address used to register the account, log-in IP addresses associated with session times and dates, account status, alternative e-mail addresses provided during registration, methods of connecting, log files, and means and source of payment (including any credit or bank account number);
- c. The types of service utilized;

d. All records or other information stored at any time by an individual using the account, including address books, contact and buddy lists, calendar data, pictures, and files;

e. All records pertaining to communications between the Provider and any person regarding the account, including contacts with support services and records of actions taken.

## **II. Information to be seized by the government**

All information described above in Section I that constitutes evidence of violations of mail fraud (18 U.S.C. § 1341), wire fraud (18 U.S.C. § 1343), conspiracy (18 U.S.C. § 371), and money laundering and conspiracy to commit money laundering (18 U.S.C. §§ 1956 & 1957), involving Jerry Ruzicka, William J. Taylor, Lawrence T. Hagen, and their co-conspirators, and occurring after January 1, 2005, including, for each account or identifier listed on Attachment A, information pertaining to the following matters:

a. Any and all records that show ownership, control, affiliation, and operation of Claris Investments LLC, Archer Consulting LLC, Archer Acoustics LLC, or any other companies, entities, investments, or assets associated with those entities or that are owned and/or controlled by RUZICKA, TAYLOR, HAGEN, or other conspirators, including but not limited to articles of incorporation, corporate resolutions or minutes, other business or corporate records, corporate memoranda, by-laws, shareholder information, service agreements, contracts, partnership agreements, memoranda of understanding, and other documents evincing ownership, control, affiliation, and operation.

b. Any and all financial records related to RUZICKA, TAYLOR, HAGEN, Claris Investments LLC, Archer Consulting LLC, Archer Acoustics LLC, or any other companies, entities, investments, or assets associated with those entities or that are owned and/or controlled by RUZICKA, TAYLOR, HAGEN, or other conspirators, including but not limited to financial statements and reports, ledgers, journals, contracts, agreements, statements, bills, invoices, banking and loan records, financial institution records, customer/client records, correspondence, facsimiles, memorandum, tax-related records or other records utilized in the preparation of tax filings, travel records, and other records related to revenues, expenses, assets, liabilities, financial obligations, capital expenditures, and the receipt, disposition, or expenditure of income, monies, funds, or assets.

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c. Any and all personnel records related to Claris Investments LLC, Archer Consulting LLC, Archer Acoustics LLC, or any other companies, entities, investments, or assets associated with those entities or that are owned and/or controlled by RUZICKA, TAYLOR, HAGEN, or other conspirators, including but not limited to personnel files/employee information for all employees and/or independent contractors who performed work for the above listed person or entities, including, but not limited to, payroll records, time sheets and other records of work performed, applications for employment, background checks, Forms 1099, Forms W-2 and Forms W-4.

d. Property records, receipts, investment records, stock and bond records, mortgages, promissory notes, handwritten notes, calendars, day planners, logs, records related to wire transfers or reflecting financial transactions, and records related to or tending to identify the source, accumulation, disposition, location, or ownership of assets, money, wealth, or property.

e. Address books, photographs, and other documents or items tending to show the identities of associates or conspirators, or tending to identify the location or possession of criminally-derived property.

f. Documents or other items related to safety-deposit boxes, storage containers or other places where evidence, fruits or instrumentalities of the above-described crimes may be stored, including any keys, passwords or combinations necessary to access such places.

g. Information relating to who created, used, or communicated with the account, including records about their identities and whereabouts.

h. Evidence indicating how and when the email account was accessed or used, to determine the geographic and chronological context of account access, use, and events relating to the crime under investigation and to the email account owner.

i. Evidence indicating the email account owner's state of mind as it relates to the crime under investigation.

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## SEARCH WARRANT ADDENDUM

1. In conducting the search authorized by this warrant, the government shall make reasonable efforts to utilize search methodology that avoids searching files, documents or other electronically stored information which is not identified in the warrant.
2. If electronically stored data, information, documents or other records have been identified and seized by the government pursuant to this warrant, the government may retain the electronic storage device (e.g. computer, hard drive, mobile device, smartphone, cell phone,) or other data storage mechanism (e.g. information produced by an internet provider or social media provider). The person from whom the electronic storage device was seized or whose data was seized from another data storage mechanism may request that the government provide him or her with electronic copies of the data, information, documents or other records by making a written request to the United States Attorney's Office, identifying with specificity the data, information, documents or other records sought to be copied. The government must respond to all such requests within a reasonable amount of time, and must provide a copy of the electronically stored data, information, documents or other records requested unless the copies requested constitute contraband, instrumentalities, or property subject to forfeiture.
3. Nothing in this warrant shall limit or prevent the government from seizing the electronic storage device as contraband or an instrumentality of a crime or commencing forfeiture proceedings against the electronic storage device and the data contained in the device. Nothing in this warrant shall limit or prevent the owner of the electronic storage device, files, software, hardware, data, information, documents or other records from (a) filing a motion with the Court pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure for the Return of Property, or (b) making a request of the government to return certain specified electronic storage devices, files, software, hardware, data, information, documents or other records.
4. The government shall establish a search methodology governing the review of seized data to ensure that no attorney-client privileged communications will be inadvertently reviewed by the prosecution team. In the event that documents or other records seized pursuant to this warrant are identified by the government as possibly containing attorney-client privileged communications, an Assistant United States Attorney, who is not a member of the prosecution team and who is not participating in the search, shall act as a "taint team" to set up an ethical wall between the evidence and the prosecution team that will prevent any privileged material from getting through.



**CERTIFICATE OF AUTHENTICITY OF DOMESTIC  
BUSINESS RECORDS PURSUANT TO FEDERAL  
RULE OF EVIDENCE 902(11)**

I, \_\_\_\_\_, attest, under penalties of perjury under the laws of the United States of America pursuant to 28 U.S.C. § 1746, that the information contained in this declaration is true and correct. I am employed by Microsoft Corporation (“Microsoft”), and my official title is \_\_\_\_\_. I am a custodian of records for Microsoft. I state that each of the records attached hereto is the original record or a true duplicate of the original record in the custody of Microsoft, and that I am the custodian of the attached records consisting of \_\_\_\_\_ (pages/CDs/kilobytes). I further state that:

a. all records attached to this certificate were made at or near the time of the occurrence of the matter set forth, by, or from information transmitted by, a person with knowledge of those matters;

b. such records were kept in the ordinary course of a regularly conducted business activity of Microsoft; and

c. such records were made by Microsoft as a regular practice.

I further state that this certification is intended to satisfy Rule 902(11) of the Federal Rules of Evidence.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature



# UNITED STATES DISTRICT COURT

for the  
District of Minnesota

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**INFORMATION STORED IN THE SERVERS  
THAT ARE ASSOCIATED WITH THE E-MAIL  
ADDRESS: Geronimo\_275@hotmail.com, THAT IS  
STORED AT PREMISES CONTROLLED BY  
MICROSOFT CORPORATION.**

**INVESTIGATIVE FILED - UNDER SEAL**

Case No. 16MJ495 (TNL)

## APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property:

See Attachment A

located in the Western District of Washington, there is now concealed:

See Attachment B

The basis for the search under Fed. R. Crim. P. 41(c) is (*check one or more*):

- evidence of a crime;
- contraband, fruits of crime, or other items illegally possessed;
- property designed for use, intended for use, or used in committing a crime;
- a person to be arrested or a person who is unlawfully restrained. related to a violation of:

Code Section

Offense Description

Title 18, United States Code, Section 1341  
 Title 18, United States Code, Section 1343  
 Title 18, United States Code, Section 1956  
 Title 18, United States Code, Section 1957  
 Title 18, United States Code, Section 371

Mail Fraud  
 Wire Fraud  
 Money Laundering and Conspiracy  
 Money Laundering  
 Conspiracy

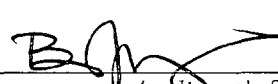
The application is based on these facts: See attached Affidavit.

Continued on the attached sheet.

Sworn to before me and signed in my presence.

Date: July 22, 2016

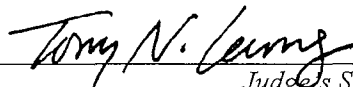
City and State: St. Paul, MN



Applicant's Signature

Brian J. Kinney, Special Agent, FBI

Printed Name and Title



Judge's Signature

Tony N. Leung, U.S. Magistrate Judge

Printed Name and Title

**ATTACHMENT A**

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- b. All records or other information regarding the identification of the account, to include full name, physical address, telephone numbers and other identifiers, records of session times and durations, the date on which the account was created, the length of service, the IP address used to register the account, log-in IP addresses associated with session times and dates, account status, alternative e-mail addresses provided during registration, methods of connecting, log files, and means and source of payment (including any credit or bank account number);
- c. The types of service utilized;

d. All records or other information stored at any time by an individual using the account, including address books, contact and buddy lists, calendar data, pictures, and files;

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b. Any and all financial records related to RUZICKA, TAYLOR, HAGEN, Claris Investments LLC, Archer Consulting LLC, Archer Acoustics LLC, or any other companies, entities, investments, or assets associated with those entities or that are owned and/or controlled by RUZICKA, TAYLOR, HAGEN, or other conspirators, including but not limited to financial statements and reports, ledgers, journals, contracts, agreements, statements, bills, invoices, banking and loan records, financial institution records, customer/client records, correspondence, facsimiles, memorandum, tax-related records or other records utilized in the preparation of tax filings, travel records, and other records related to revenues, expenses, assets, liabilities, financial obligations, capital expenditures, and the receipt, disposition, or expenditure of income, monies, funds, or assets.

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c. Any and all personnel records related to Claris Investments LLC, Archer Consulting LLC, Archer Acoustics LLC, or any other companies, entities, investments, or assets associated with those entities or that are owned and/or controlled by RUZICKA, TAYLOR, HAGEN, or other conspirators, including but not limited to personnel files/employee information for all employees and/or independent contractors who performed work for the above listed person or entities, including, but not limited to, payroll records, time sheets and other records of work performed, applications for employment, background checks, Forms 1099, Forms W-2 and Forms W-4.

d. Property records, receipts, investment records, stock and bond records, mortgages, promissory notes, handwritten notes, calendars, day planners, logs, records related to wire transfers or reflecting financial transactions, and records related to or tending to identify the source, accumulation, disposition, location, or ownership of assets, money, wealth, or property.

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g. Information relating to who created, used, or communicated with the account, including records about their identities and whereabouts.

h. Evidence indicating how and when the email account was accessed or used, to determine the geographic and chronological context of account access, use, and events relating to the crime under investigation and to the email account owner.

i. Evidence indicating the email account owner's state of mind as it relates to the crime under investigation.

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## SEARCH WARRANT ADDENDUM

1. In conducting the search authorized by this warrant, the government shall make reasonable efforts to utilize search methodology that avoids searching files, documents or other electronically stored information which is not identified in the warrant.
2. If electronically stored data, information, documents or other records have been identified and seized by the government pursuant to this warrant, the government may retain the electronic storage device (e.g. computer, hard drive, mobile device, smartphone, cell phone,) or other data storage mechanism (e.g. information produced by an internet provider or social media provider). The person from whom the electronic storage device was seized or whose data was seized from another data storage mechanism may request that the government provide him or her with electronic copies of the data, information, documents or other records by making a written request to the United States Attorney's Office, identifying with specificity the data, information, documents or other records sought to be copied. The government must respond to all such requests within a reasonable amount of time, and must provide a copy of the electronically stored data, information, documents or other records requested unless the copies requested constitute contraband, instrumentalities, or property subject to forfeiture.
3. Nothing in this warrant shall limit or prevent the government from seizing the electronic storage device as contraband or an instrumentality of a crime or commencing forfeiture proceedings against the electronic storage device and the data contained in the device. Nothing in this warrant shall limit or prevent the owner of the electronic storage device, files, software, hardware, data, information, documents or other records from (a) filing a motion with the Court pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure for the Return of Property, or (b) making a request of the government to return certain specified electronic storage devices, files, software, hardware, data, information, documents or other records.
4. The government shall establish a search methodology governing the review of seized data, information, documents or other records to ensure that no attorney-client privileged communications will be inadvertently reviewed by the prosecution team. In the event that data, information, documents or other records seized pursuant to this warrant are identified by the government as possibly containing attorney-client privileged communications, an Assistant United States Attorney, who is not a member of the prosecution team and who is not participating in the search, shall act as a "taint team" to set up an ethical wall between the evidence and the prosecution team that will prevent any privileged material from getting through to the prosecution team.

16mj495 (TNL)

STATE OF MINNESOTA        )  
  )  
COUNTY OF RAMSEY        )        ss.        AFFIDAVIT OF BRIAN J. KINNEY

Your affiant, Brian J. Kinney, being duly sworn, does state the following is true and correct to the best of his knowledge and belief:

**AFFIANT EXPERIENCE AND BACKGROUND**

1. I am employed as a Special Agent with the Federal Bureau of Investigation. I have been employed in that capacity for approximately 18 years.

2. As a Special Agent, my primary duties and responsibilities consist of conducting criminal investigations of individuals and businesses for possible violations of federal laws. I am presently assigned to the FBI's Minneapolis, Minnesota field office where I am a member of the White Collar Crime Squad.

3. During my employment as a Special Agent, I have conducted and participated in numerous criminal investigations of various financial schemes involving mail fraud, wire fraud, money laundering, and other criminal acts, including criminal schemes where individuals embezzle or misappropriate money and business opportunities from their employer. Furthermore, in the course of my training and experience, I have become familiar with the types of records businesses typically maintain in the course of their regular activity, including ledgers, journals, invoices, receipts, and bank documents.

4. Along with the Internal Revenue Service-Criminal Investigation and United States Postal Inspection Service, I am participating in a joint investigation into a multi-layered embezzlement scheme perpetrated upon a company, Starkey Laboratories, and its

owner, William F. Austin, by certain of Starkey's executives, employees, and associates, including Jerome (Jerry) C. RUZICKA, Scott A. NELSON, Jeffrey (Jeff) LONGTAIN, William Jeffrey (Jeff) TAYLOR, Lawrence (Larry) HAGEN, and others working in conjunction with and/or at the behest of the above-named individuals.

### **BACKGROUND ON AFFIDAVIT**

5. I make this affidavit in support of an application for a search warrant for information associated with the e-mail account Geronimo\_275@hotmail.com (Subject E-Mail Account) stored at premises controlled by Microsoft Corporation ("Microsoft"), a software company and e-mail provider headquartered at 1 Microsoft Way, Redmond, Washington 98052-6399. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Microsoft to disclose to the government records and other information in their possession pertaining to the subscriber or customer associated with the accounts, including the contents of communications further described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

6. The statements contained in this affidavit are based in part on information I have learned through my own investigation, experience, and background as a Special Agent, and from other law enforcement agents, including the review of records obtained through subpoena, official request, or pursuant to search warrant, as well as interviews of



witnesses. I have not included every fact known to me and the other investigators; however, I have set forth facts sufficient to establish probable cause to believe that evidence of violations of Title 18, United States Code, 1341 (mail fraud), 1343 (wire fraud), 371 (conspiracy), 1956 (money laundering and conspiracy to commit money laundering), and 1957 (money laundering), can be found in information associated with the Subject E-Mail Account.

### **JURISDICTION**

7. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court is “a district court of the United States (including a magistrate judge of such a court) ... that – has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i). Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of the search warrant pertaining to the Subject E-Mail Account.

### **FACTUAL BACKGROUND**

8. The Starkey family of companies (Starkey Laboratories, Starkey Hearing Technologies, etc.) were founded by William F. Austin in 1967 (hereafter referred to collectively as “Starkey”).<sup>1</sup> Starkey’s primary business is the development, manufacture, and distribution of hearing aids. Starkey is the largest manufacturer of hearing aids in the

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<sup>1</sup> Austin’s original company was named Professional Hearing Aid Service, but he began using the Starkey name when he purchased Starkey Labs in 1970.

United States, and one of the largest such manufacturers in the world. Starkey is a private company, owned by Austin, with its headquarters located in Eden Prairie, Minnesota.

9. Jerry RUZICKA served as Starkey's President from about 1998 until he was terminated in September 2015. Prior to working as President, RUZICKA was Starkey's Vice President of Manufacturing.

10. Scott NELSON served as Starkey's Chief Financial Officer ("CFO") from about 2010 until he was terminated in September 2015. NELSON was originally hired by Starkey in 1997, and prior to acting as CFO, NELSON served as Starkey's Controller and Vice President of Finance.

11. Jeff LONGTAIN served as the Chief Operating Officer (and later President) of Northland Hearing Centers, a subsidiary of Starkey responsible for acquiring and managing retail hearing aid facilities, until he was terminated in September 2015.

12. Jeff TAYLOR served as the Vice President of Sales for Sonion (U.S.). Sonion is a manufacturer of miniature components for hearing aids that acted as a supplier to Starkey. As described below in more detail, TAYLOR (along with RUZICKA) also controlled Archer Consulting, a company that purportedly provided "consulting" services to Starkey and was paid approximately \$7,650,000 in fees between 2006 and 2015.

13. Larry MILLER served as Starkey's Vice President of Human Resources from about 1994 until he was terminated in September 2015.

14. Susan MUSSELL served as Starkey's General Counsel.

15. Larry HAGEN was employed by Starkey between 1982 and 1986. In about 1986, he left Starkey to start his own retail hearing aid company, Micro Ear Technologies. Micro Ear Technologies was purchased by Starkey in 1999 for approximately \$10 million. HAGEN was re-hired by Starkey, and worked for Starkey from 1999 to 2005. In about 2005, HAGEN again left Starkey. After departing, HAGEN started at least two companies involved in retail hearing aid sales, SoundPoint Audiology and Hearing Services LLC.

### **SUMMARY OF INVESTIGATION**

16. The government's investigation has revealed that beginning at least as early as 2006, and continuing until their termination in September 2015, RUZICKA and NELSON conspired to embezzle and misappropriate money and business opportunities belonging to Starkey. This scheme contained many different facets, including but not limited to: (a) paying exorbitant bonuses, life insurance payments, and other perks to themselves and their co-conspirators that were neither approved by Austin (Starkey's CEO) nor consistent with their fiduciary duties as Starkey executive officers; (b) surreptitiously granting themselves (and LONGTAIN) restricted stock in Starkey's retail affiliate (Northland) and then causing Starkey to pay themselves millions of dollars in compensation in order to terminate the restricted stock; (c) creating and/or controlling companies that purported to provide services to Starkey, and then submitting false and/or inflated invoices to Starkey for those services in order to enrich themselves at Starkey's expense; and (d) misappropriating corporate opportunities to entities controlled by the conspirators in order to divert money from Starkey and/or actively compete with Starkey.

Additionally, in carrying out this scheme, the conspirators caused interstate mailings and interstate wires to occur, and engaged in transactions with proceeds of the fraud that exceeded \$10,000 and that were designed to conceal the source of the funds.

17. The government's investigation has revealed numerous independent but inter-related parts of this scheme to defraud. Although the investigation is ongoing and certain aspects of the scheme must still be unraveled, it appears that RUZICKA, NELSON, and their co-conspirators embezzled and misappropriated at least approximately \$30,000,000 from Starkey.

#### **PROBABLE CAUSE**

18. According to Austin and Starkey's personnel records, RUZICKA assumed the role of President of Starkey in about 1998 after serving as a Vice President responsible for manufacturing. For the next six years, Austin remained heavily involved in the day-to-day operations of Starkey. Beginning in about 2004, however, Austin transitioned to working full-time on the Starkey Foundation, a non-profit organization that supplies hearing aids to impoverished and underdeveloped communities around the world. Austin remained, however, the CEO of Starkey, and regularly met with and provided guidance to RUZICKA and NELSON, particularly on matters involving acquisitions and strategic decisions. According to Austin, he expected and instructed RUZICKA and NELSON to run the company in the same manner that Austin had operated it, and to discuss with him anything "unusual" (*i.e.* outside the scope of Starkey's normal business operations). On multiple occasions between 2006 and 2015, Austin confronted RUZICKA and NELSON

when they took actions—such as purchasing a building and investing in another company—without first obtaining Austin’s approval.

19. According to Austin, at least once a year he requested from RUZICKA, NELSON, and/or Larry MILLER a “descending payroll” report, which listed the amounts paid by Starkey to each of its employees.<sup>2</sup> On each such occasion, the list was provided to him, typically by MILLER or NELSON. Austin typically shredded the list after he reviewed it because of the confidential nature of the information. Although Austin could not recall specific numbers, the “descending payroll” list provided to him by RUZICKA, NELSON, and/or MILLER indicated that RUZICKA earned between \$600,000 and \$900,000—the amount increasing incrementally each year—between 2006 and 2015. According to the list, the other employees earned less than RUZICKA in amounts that approximately correlated to their position. According to Austin, he never authorized RUZICKA, NELSON, or any other Starkey employee to pay bonuses to employees beyond the amounts included in the “descending payroll” list he was provided each year, and was unaware that any such payments had been made. Furthermore, Austin never authorized RUZICKA, NELSON, or any other Starkey employee to receive compensation in the form of personal life insurance contracts paid for by Starkey or any other non-traditional form of compensation. Starkey’s corporate by-laws provide that the “salaries of all officers of the Company shall be fixed by the Board of Directors”—Austin is the sole member of the board of directors. The by-laws further provide that the president, RUZICKA, “subject to

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<sup>2</sup> The list purported to cover all forms of compensation, including bonus payments.

approval of or review by the Board of Directors [Austin],” shall “appoint and discharge employees and agents of the Company and fix their compensation and make and sign contracts and agreements in the name and on behalf of the Company.”

20. According to Austin, Starkey generally did not issue employment contracts to any of its employees. In approximately 2006, however, RUZICKA approached Austin and asked for a 10-year employment agreement. RUZICKA told Austin that RUZICKA intended to leave the workforce in about 2016. RUZICKA and Austin agreed that if RUZICKA stayed employed at Starkey through 2016, Austin would pay RUZICKA a “pension” for the following ten years equal to his salary in each of the preceding ten years (*i.e.*, Year 1 = Year 11; Year 2 = Year 12, etc.). In addition, Austin agreed that if Austin died during the pendency of the employment agreement (between 2006 and 2016), RUZICKA would be entitled to 10% of the value of the company if it were sold during the term of the contract (in order to incentivize RUZICKA to maximize the value of the company). Austin did not authorize RUZICKA to provide employment contracts to any other employees, and according to Austin RUZICKA was well aware of Austin’s policy of not issuing such contracts to employees.

21. According to Austin, he did not intend to renew RUZICKA’s contract at its expiration in 2016. Austin intended to promote his step-son, Brandon Sawalich, as Starkey’s President. Sawalich has worked for Starkey for approximately 20 years, most recently serving as Starkey’s Vice President of Sales and Marketing. Austin discussed this

succession plan with RUZICKA in approximately 2012 and asked RUZICKA to help in the transition by mentoring Sawalich, a request that RUZICKA largely ignored.

22. According to Austin, neither RUZICKA nor NELSON (nor any other employee) had been given permission or authority to sign Austin's name on documents requiring his signature (with the exception of a few limited power of attorney documents that Austin signed for a specific purpose, such as real estate transactions). However, according to Anita Wagner, a paralegal in Starkey's legal department, when documents required Austin's signature, they were placed in a folder on RUZICKA's or NELSON's desks, and the document would come back later with Austin's purported signature. Neither Wagner nor any other Starkey employee who was interviewed ever directly obtained Austin's signature. Furthermore, according to Patty Bennington, another Starkey paralegal, she witnessed RUZICKA sign Austin's name on Starkey business documents on multiple occasions.<sup>3</sup>

23. According to Austin, he never authorized RUZICKA or NELSON to pursue business interests outside of Starkey, particularly business interests that interacted or competed with Starkey in any way. In 2006, when RUZICKA approached Austin to discuss his employment contract, RUZICKA had initially suggested that Austin allow him to obtain and operate Northland (Starkey's retail arm) as compensation for his years of

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<sup>3</sup> I have reviewed multiple documents from Starkey's files during this investigation purportedly signed by Austin that, in fact, contained forged signatures. As described below in more detail, I compared Austin's true signature (as acknowledged by Austin) with the signatures located on the documents to which Austin disclaimed any knowledge, and based on my familiarity with Austin's true signature, as well as my training and experience, the forged signatures appear to be authored by someone other than Austin.

service. Austin unequivocally refused, telling RUZICKA that it would be a “conflict of interest” and would take his focus away from Starkey Labs, which was the entire point of retaining RUZICKA for the next ten years. On several occasions between 2006 and 2015, Austin heard rumors that RUZICKA owned a part of Northland or other entities with whom Starkey did business. On each such occasion, when confronted by Austin, RUZICKA flatly denied having any ownership interest in Northland or any other entity connected to Starkey.

### Northland

24. According to Austin and Starkey’s business records, Northland US, LLC, was created in approximately 2002 and was wholly-owned by Austin. Beginning in about 2005, Northland was used to acquire and operate retail hearing aid establishments. Occasionally, Starkey’s independently-owned retail partners would sell their businesses, and rather than allow a competitor to purchase or otherwise obtain the stream of business, Starkey would agree to purchase the retailer and operate it until a suitable buyer could be found. Starkey preferred to pursue these acquisitions under a subsidiary so as not to appear to be competing with its other retail partners. Starkey loaned Northland US approximately \$5,000,000 for this purpose through a promissory note.

25. According to a “Written Action of the Sole Member of Northland US, LLC,” dated August 2, 2002, William F. Austin was nominated and elected as Governor of the company. Furthermore, according to another “Written Action of the Sole Member of Northland US, LLC,” dated January 1, 2003, and signed by Austin, “the sole Governor



[Austin] may execute any and all documents, including but not limited to deeds, bills of sale and purchase agreements, selling or otherwise transferring any real estate or tangible property owned by Northland US, LLC now or in the future in the sole Governor's discretion."

### **2006 Assignment of Rights**

26. According to Austin, he at all times believed that he was the sole owner of Northland. In fact, as noted above, on multiple occasions where he heard a rumor that RUZICKA was a part-owner of Northland, Austin confronted RUZICKA or NELSON and was told that he (and only he) owned Northland.

27. Despite these assurances, in about 2006, RUZICKA, NELSON, and LONGTAIN shifted Northland's assets into an entity that they controlled. Specifically, in 2006, Susan MUSSELL (Starkey's General Counsel) approached an attorney from Briggs & Morgan, and asked the attorney to assist in creating a new entity to house Starkey's retail assets. MUSSELL told the attorney that Wells Fargo—with whom Starkey had a business line of credit—was uncomfortable with the business arrangement between Starkey and Northland, and wanted Starkey to be no more than a minority owner of Northland.<sup>4</sup> Multiple other Starkey employees were provided the same explanation by NELSON or MUSSELL—that Wells Fargo requested the change in Northland's structure.

28. According to Sharlyn Rekenthaler, the Relationship Manager for Wells Fargo who oversaw Starkey's various Wells Fargo financial accounts, Wells Fargo did not

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<sup>4</sup> According to MUSSELL, the information she provided to Briggs & Morgan came from Scott NELSON. MUSSELL never spoke to anyone from Wells Fargo or William Austin.

request, let alone require, that the new Northland entity be controlled by someone other than Austin and/or Starkey. In 2006, when Wells Fargo discovered that Starkey had loaned approximately \$5,000,000 to Northland US—which at that time was not part of the Wells Fargo line of credit—Wells Fargo requested that Northland be brought on as a signatory to the line of credit, but never requested (and had no preference regarding) a change in the ownership of Northland.

29. At the direction of NELSON and RUZICKA, in May 2006, Briggs & Morgan helped Starkey form a new entity, Northland Hearing Centers, Inc. (“Northland Hearing”), with RUZICKA as President and Chief Executive Officer, NELSON as Chief Financial Officer, LONGTAIN as Chief Operating Officer, and MUSSELL as Secretary.

30. According to Northland Hearing’s records, Northland Hearing then acquired all of Northland US’s assets in exchange for assuming the \$5,000,000 promissory note to Starkey.

31. According to Northland Hearing’s records, Northland Hearing issued 100,000 shares of stock, and provided a total of 51,000 shares to RUZICKA, NELSON, and LONGTAIN as restricted stock grants that vested after ten years (in 2016). The remaining 49,000 shares were acquired by Starkey in exchange for the \$5,000,000 promissory note.

32. Certain of the documents executing the Northland transactions were purportedly signed by Austin in his capacity as the sole director of Starkey and/or Northland US. According to Austin, he never signed any of these documents, nor did he

authorize RUZICKA, NELSON, or anyone else to sign on his behalf.<sup>5</sup> In fact, he was entirely unaware that RUZICKA, NELSON, and LONGTAIN were assigning themselves restricted stock rights in Starkey's retail subsidiary. The remainder of the transactional documents associated with the assignment of Northland US's assets to Northland Hearing were signed by RUZICKA, NELSON, and/or LONGTAIN in their capacities as officers of Starkey and/or Northland Hearing.

### **2013 Liquidation of Restricted Stock Grants**

33. In 2013, after Austin had made clear to RUZICKA his plan for Sawalich to succeed RUZICKA as President of Starkey, RUZICKA and NELSON caused Starkey to purchase the unvested restricted stock grants issued to RUZICKA, NELSON, and LONGTAIN, for approximately \$15,000,000.

34. According to Karen Hines, Director of Tax for Starkey, in April 2013, NELSON told Hines that Starkey was looking to terminate the restricted stock agreements. NELSON explained to Hines (as well as others) that Starkey wanted to terminate the restricted stock grants because the value of the stock was growing faster than anticipated, and the company wanted to act before the value of the stock appreciated any further.

35. According to Eric Feld, Retail Controller for Northland Hearing, NELSON told him he had obtained a valuation of Northland Hearing that showed it was worth approximately \$100,000,000. Feld believed this estimate was suspiciously high given the

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<sup>5</sup> I have compared Austin's true signature (located on documents associated with the founding of Northland US and elsewhere) with the signatures located on the documents to which Austin disclaimed any knowledge, and based on my familiarity with Austin's true signature, as well as my training and experience, the forged signatures appear to be authored by someone other than Austin.

fact that Northland Hearing never made any money. When Feld questioned the valuation, NELSON “shut [him] down” and would not let Feld see the valuation report.<sup>6</sup> Additionally, NELSON told Feld that this was a “very secretive” transaction and was “not to be discussed” with anyone.

36. According to Starkey’s banking and business records, RUZICKA and NELSON caused Starkey to compensate RUZICKA, NELSON, and LONGTAIN, in exchange for terminating the unvested restricted stock, resulting in payments totaling approximately \$8,200,000. Specifically, according to Wells Fargo Bank records, the below noted checks were issued to Lincoln Financial Group, P.O. Box 0821, Carol Stream, IL:

<u>Check #</u>	<u>Date</u>	<u>Amount</u>	<u>For Benefit of</u>
297920	06/26/2013	\$230,000.00	Acct. 4876947 (Nelson)
298192	07/11/2013	\$230,000.00	Acct. 4876981 (Longtain)
298193	07/11/2013	\$725,000.00	Acct. 4877260 (Ruzicka)

Additionally, the below noted checks drawn on a Starkey bank account were mailed to Edward Jones, 700 Seville Drive, Suite 201, Jordan, MN:

<u>Check #</u>	<u>Date</u>	<u>Amount</u>	<u>For Benefit of</u>
298848	08/08/2013	\$2,070,000.00	Acct. 808-14970 (Nelson)
298847	08/08/2013	\$2,070,000.00	Acct. 808-14977 (Longtain)
298849	08/08/2013	\$2,900,000.00	Acct. 808-09541 (Ruzicka)

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<sup>6</sup> Michael Jacobson, Starkey’s Controller, was also present at this meeting, and described NELSON as “angry” when confronted on the legitimacy of the valuation, and stated that NELSON slammed his hand down on the desk and grabbed the document.

The payments to RUZICKA, NELSON, and LONGTAIN were “grossed up” for taxes, and therefore an additional approximately \$7,000,000 was sent to the IRS on behalf of RUZICKA, NELSON, and LONGTAIN to cover the income taxes that would accrue to the recipients. Thus, in total, Starkey paid approximately \$15,000,000 to or on behalf of RUZICKA, NELSON, and LONGTAIN as a result of the Northland Hearing restricted stock transaction.

37. According to Hines, there were significant tax ramifications as a result of the transaction. Northland Hearing had a \$14,000,000 net operating loss, and therefore Starkey would lose a significant tax benefit if Northland Hearing, rather than Starkey, made the payments to RUZICKA, NELSON, and LONGTAIN. When Hines reported this to NELSON, and suggested that the payments come directly from Starkey, NELSON responded “no, that’s not going to happen.” According to Hines, conducting the transaction through Northland Hearing made it far less visible because Northland Hearing’s books were less scrutinized than Starkey’s.

38. Furthermore, despite the fact that the payments were made from Starkey between June and August of 2013, NELSON waited until December 2013 to book the transaction, and then booked the transaction as though the payments had been made by Northland. NELSON caused Northland to add RUZICKA and NELSON to Northland’s payroll (they were previously only on Starkey’s payroll), and issued payroll statements indicating that the payments were made in December 2013 rather than June/August 2013. When Hines specifically asked when the payments were made as part of her effort to

analyze the tax treatment for the payments, NELSON told her that the payments had been made in December.

39. According to Rick Morgan—an attorney with Bowman & Brooke LLP who represented Starkey in prior civil litigation matters—he was contacted by Susan MUSSELL in about November 2013 and was asked to provide an opinion as to whether the “terms of Starkey Laboratories, Inc.’s acquisition of Northland Hearing Centers, Inc., by which Starkey received a 49% share of Northland’s stock while certain Starkey officers (Jerry Ruzicka, Scott Nelson, and Jeff Longtain) received a 51% share, give rise to potential claims against Starkey’s corporate officers.” During conversations in late 2013, MUSSELL informed him that Bill Austin did not know about and had not approved the Northland Hearing transactions. Morgan was asked to assume (without being provided supporting documentation) that Starkey’s bylaws provided RUZICKA with broad authority to set compensation. In fact, as noted above, Starkey’s bylaws specifically provide that RUZICKA’s authority is “subject to approval of or review by the Board of Directors (Austin).”

40. According to records obtained from Bowman & Brooke LLP, in or about January 2014, Morgan prepared a memorandum (the “Northland Memo”) attempting to answer this question. In the memorandum, after describing the general details of the creation of Northland Hearing and its acquisition of Northland US, Morgan writes “[w]e understand that Starkey’s sole shareholder is not aware that Starkey owns only 49% of Northland or that The Officers have any ownership interest in Northland.”

41. The ultimate draft of the Northland Memo is dated January 15, 2014. On NELSON's cell phone (searched pursuant to a search warrant executed on November 4, 2015), law enforcement recovered the following e-mail sent from Richard Morgan [Richard.Morgan@bowmanandbrooke.com] to NELSON (falltrip58@yahoo.com)<sup>7</sup> on January 15, 2014, with the subject "Northland Issues": "Scott, As promised, here is the follow up to our discussion. Obviously, I have not discussed these issues with anyone at Starkey. Please call when you have a chance. Rick Morgan."

42. According to Rick Morgan, in addition to sending the memorandum to NELSON, he had conversations with both NELSON and MUSSELL by mid-December 2013 in which he discussed with them the issues raised in the memorandum, including his concerns regarding the lack of documentation supporting RUZICKA's supposed authority to enter into the Northland transactions.

#### **Alteration of Payroll Reports**

43. As noted above, at least once a year Austin requested from RUZICKA, NELSON, and/or Larry MILLER a "descending payroll" report, which listed the total amount (including bonus) paid by Starkey to each of its employees. On each such occasion, the list was provided to him, typically by MILLER. Although Austin could not recall specific numbers, the "descending payroll" list provided to him by MILLER never revealed payments—such as the Northland Hearing restricted stock payouts—inconsistent with a normal salary for each employee.

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<sup>7</sup> NELSON had previously sent Morgan his "private" email address to which he instructed Morgan to send the memo.

44. According to Julie Miller, Director of Payroll for Starkey, she was asked each year—typically by either MILLER or NELSON—to prepare the descending payroll report. Miller prepared a separate report for Starkey and Northland Hearing, and then e-mailed the reports to NELSON, MILLER, and/or RUZICKA.

45. According to Julie Miller (Payroll), Larry MILLER received a “normal” bonus each year and then, beginning in about 2006 (the same year as the initial Northland Hearing transaction), MILLER received an additional bonus of approximately \$88,000 each year from 2006 through MILLER’s termination in 2015. When Julie Miller switched from reporting to MILLER in the Human Resources department to reporting to NELSON in the Finance department, she told NELSON about MILLER’s yearly \$88,000 bonus. In response, NELSON told Julie Miller that “Larry has his own deal.” A review of the Starkey Detailed Payroll Register for the period 2006 to 2015 identified net bonus payments to MILLER totaling over \$1.6 million, an average of about \$160,000 per year.

46. According to Julie Miller (Payroll), one year Austin requested to see the descending payroll report and waited while MILLER prepared the report. Julie Miller sent the report to MILLER, and then watched as MILLER opened the file, deleted his name from the report, and printed it out to give to Austin.

47. Searches of computers used by MILLER and NELSON (conducted after their termination in 2015) revealed copies of descending payroll reports from which bonus payments to MILLER, NELSON, RUZICKA, LONGTAIN, and others had been deleted. For example, in December 2013, Julie Miller (Payroll) sent a copy of the descending



payroll reports for 2013 to NELSON and RUZICKA. The reports included payments totaling approximately \$15,000,000 to RUZICKA, NELSON, and LONGTAIN resulting from the Northland Hearing restricted stock transaction. A copy of the same reports, but without the Northland Hearing payments (as well as MILLER's \$88,250 bonus), was discovered on NELSON's computer. On January 6, 2014, NELSON sent an e-mail to MILLER containing the modified descending payroll reports, and in the body of the e-mail stated: "Larry, attached are the descending gross files for 2013 in case you are asked to provide them. You can check the numbers, but I think they are largely consistent with prior years reporting."

#### **Archer Consulting**

48. According to Archer Consulting's business records, Archer Consulting, Inc. was incorporated in September 2005. At the time of incorporation, Jeff TAYLOR was identified as Archer Consulting's Chief Executive Officer and a 50% owner of the corporation. RUZICKA owned the remaining 50% of Archer Consulting. Archer Consulting's registered office is 8572 Highway 212, Cologne, MN 55322 (TAYLOR's residence).

49. According to Phil Lyons, Starkey's Vice President of International Operations, Jeff TAYLOR is a friend of RUZICKA, with whom RUZICKA has a long-standing relationship. E-mail records similarly reflect a significant social relationship between RUZICKA and TAYLOR.

50. According to a Consulting Services Agreement dated January 1, 2009, recovered from RUZICKA's work computer after he was terminated, Starkey hired Archer Consulting to provide "consulting services for the purchase of transducers," including opinions on the technology, price, and delivery. The Agreement set forth a payment schedule of \$75,000 per month, and directed that "[a]ny notice or other communication to Starkey will be in writing or e-mail and directed to Jerry Ruzicka." As noted above, Starkey purchased transducers from TAYLOR's employer, Sonion. As Vice President of Sales for Sonion with responsibility for the Starkey account, TAYLOR was already being compensated for providing the exact services purportedly covered by the Consulting Services Agreement.<sup>8</sup>

51. According to Starkey's records, payments were made to Archer Consulting prior to the 2009 Consulting Agreement. However, before 2009, the payments were not made in exchange for purported "consulting" services, but rather as a commission on sales of Sonion products to Starkey. According to Sonion's e-mail records, on March 10, 2006, TAYLOR [willjt1@mac.com] wrote to RUZICKA [jerry\_ruzicka@starkey.com]: "Hi Jerry...I am in the midst of catching up on some Archer invoices, and want to seek your input/advice. I've been struggling to find some creative way to determine/base the Archer commission, but now think that the simplest approach is just a straight % of sales invoiced for the month." Notably, as President of Sonion US, TAYLOR was already being paid a commission by Sonion for sales to Starkey. When interviewed, Sonion's CEO told

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<sup>8</sup> Additionally, as President of Starkey, RUZICKA was already compensated for any work he performed related to the purchase of components from Sonion for Starkey's hearing aids.

investigators that Sonion had been unaware of TAYLOR's receipt of the additional commission and/or consulting payments from Starkey.

52. The following invoices were recovered from RUZICKA's work computer,<sup>9</sup> and correspond to payments made by Starkey to Archer Consulting between 2009 and 2015:

<u>Invoice #</u>	<u>Date</u>	<u>Description</u>	<u>Amount</u>
11509P	January 15, 2009	Consulting Services for January thru June 2009	\$360,000.00
61909P	June 19, 2009	Consulting Services for July thru December 2009	\$450,000.00
110109P	November 1, 2009	Consulting Services for January thru June 2010.	\$450,000.00
110109P	June 1, 2010	Consulting Services for July thru December 2010	\$450,000.00
110110P	November 1, 2010	Consulting Services for January thru June 2011	\$450,000.00
110110P	July 1, 2011	Consulting Services for July thru December 2011	\$450,000.00
110109C	November 1, 2010	Special Project Global Market Analysis	\$50,000.00
112211P	November 1, 2011	Consulting Services for January thru June 2012	\$450,000.00
1201112P	July 1, 2012	Consulting Services for July thru December 2012	\$450,000.00
112513P	November 1, 2012	Consulting Services for January thru June 2013	\$450,000.00

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<sup>9</sup> RUZICKA's work computer also contained a 2013 Schedule K-1 from Archer Consulting to Jerome C. Ruzicka, 16110 46th Ave N, Plymouth, MN 55446 (taxpayer copy). The Schedule K-1 for RUZICKA reflects ordinary business income of \$247,477.00, interest income of \$2,740.00, and royalties of \$2,616.00.

081413P	August 1, 2013	Consulting Services for July thru December 2013	\$450,000.00
111413P1	November 1, 2013	Consulting Services for January thru June 2014	\$450,000.00
081414P	July 1, 2014	Consulting Services for July thru December 2014	\$450,000.00
121514P1	December 1, 2014	Consulting Services for January thru June 2015	\$225,000.00

The payments from Starkey to Archer Consulting between 2006 and 2015 totaled approximately \$7,650,000.<sup>10</sup>

53. According to bank records for Archer Consulting, nearly all of the money that was deposited into the account between 2008 and 2015—approximately \$6.2 million<sup>11</sup>—came from Starkey (a small amount came from other businesses controlled by RUZICKA and/or TAYLOR). During the same time period, RUZICKA and TAYLOR received checks directly from Archer Consulting totaling over \$3.4 million, and received another approximately \$2.0 million from Archer Consulting through a payroll company. Another \$500,000 was transferred to Archer Medical, a company controlled by RUZICKA and TAYLOR. Significantly, the Archer Consulting bank account does not show expenses or payments consistent with the operation of a legitimate consulting business.

54. According to Austin, he was entirely unaware of the existence of the Archer Consulting agreement, as well as RUZICKA's ownership of Archer Consulting. There is

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<sup>10</sup> Disbursements to Archer Consulting were made by electronic payments and by check (via the United States Postal Service).

<sup>11</sup> Bank records were only available back to 2008.

no indication, from Starkey's records or from employees interviewed by the government, that Archer Consulting ever provided any legitimate consulting services to Starkey. When asked about the services purportedly provided by Archer Consulting, Keith Guggenberger (Starkey's V.P. of Operations) and Tim Trine (Starkey's V.P. of Research and Development), both of whom regularly used the components supplied by Sonion, reported that they were entirely unaware of any consulting services provided by TAYLOR and could think of no legitimate reason why RUZICKA received payments from Archer Consulting.

#### **Claris Investments LLC**

55. Claris Investments LLC ("Claris") was formed in July 2002. The initial managers were identified as RUZICKA and HAGEN. Pursuant to a Member Purchase Agreement dated January 1, 2005, TAYLOR purchased a 1/3 share in Claris from RUZICKA and HAGEN.

56. According to business and e-mail records, beginning in 2004 and continuing until 2011, RUZICKA and TAYLOR caused Claris to obtain preferred pricing to purchase Sonion hearing aid components at the same price enjoyed by Starkey given Starkey's significant purchase volume from Sonion. Claris then agreed to provide the same preferred pricing on Sonion products to a German hearing aid distributor, Auric Horsysteme (Auric). In exchange for the preferred pricing, Claris submitted invoices to Auric for "commissions" based on the total sales from Sonion to Auric, resulting in payments from Auric to Claris of at least \$358,000 between 2004 and 2011.

57. Funds deposited to the Claris bank account were distributed to RUZICKA, HAGEN, and TAYLOR. For example, in June 2008 three checks for \$25,000.00 payable to RUZICKA, HAGEN, and TAYLOR were negotiated that included the check memo “disbursement.” In total, between 2003 and September 2015, RUZICKA, HAGEN, and TAYLOR received at least approximately \$71,000; \$79,000; and \$63,000, respectively, directly from Claris, and another approximately \$240,000 was paid by Claris to other entities on their behalf.

58. The invoices from Claris to Auric identified the Claris sales representative as “Geronimo Rose.” In an e-mail dated August 25, 2007, from TAYLOR to HAGEN, TAYLOR wrote:

Hi Larry... I did not think Auric knew that I was affiliated with Claris, and was hoping they would not...thus the pen name Geronimo Rose. Also, please use my .mac address for any correspondence on Claris / Auric issues as this can cause me some significant heartache if Sonion knows I am involved in any way. Thanks Larry. jT

In response to that e-mail thread, HAGEN wrote: “Jeff One more thing. What is geronimos e-mail address,” to which TAYLOR responded “Geronimo\_275@msn.com”.<sup>12</sup>

59. TAYLOR’s work computer was provided to the government by Sonion, TAYLOR’s former employer. The computer contained e-mails, including several related to Geronimo\_275@hotmail.com.

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<sup>12</sup> Microsoft has historically offered several different e-mail domains, including “@msn.com” and “@hotmail.com.” The e-mails located on TAYLOR’s work computer used the domain “@hotmail.com.” It appears, based on the context of the emails, that TAYLOR mistakenly identified the email address as Geronimo\_275@msn.com rather than Geronimo\_275@hotmail.com in this email.

60. An e-mail dated November 29, 2007 from Geronimo Rose <Geronimo\_275@hotmail.com> to Larry HAGEN with a cc: to Jerry RUZICKA states: “Dear Mr. Hagen, Please find attached a corrected list of Sonion invoices to Auric for the time period beginning July 2006 thru and including November 2007.”

61. An e-mail dated March 9, 2009 from Larry HAGEN to “Geronimo Rose <Geronimo\_275@hotmail.com> states: “Jeff here are the statements for Claris and FBD. Larry.” The e-mail contains a forwarded e-mail from Alliance Banks regarding 2008 account statements for Claris and FBD.<sup>13</sup>

62. An e-mail dated November 19, 2011, from Geronimo Rose <Geronimo\_275@hotmail.com> to Larry HAGEN with the subject “Auric Revised Invoices” states: “Dear Mr. Hagen, Pls find attached the worksheet per our discussions. The listed invoices now reflect the newly agreed upon (50%) commission level. The total due Claris is not \$61,399.72 Auric can use this email as credit and reissue authorization for each of the invoices listed. Thank you. Gero.”

63. Based on the content and the context of the emails set forth above, it appears that TAYLOR used the pseudonym Geronimo Rose and the email address Geronimo\_275@hotmail.com when posing as a “sales representative” for Claris so that Auric and, more importantly, his employer Sonion did not find out that he was involved with Claris. The e-mails further show that HAGEN knew that TAYLOR was hiding his

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<sup>13</sup> FBD was an investment company owned and controlled by RUZICKA, TAYLOR, and HAGEN.

involvement in Claris from Sonion (*i.e.* TAYLOR was enriching himself at Sonion's expense).

### Archer Acoustics

64. According to business and e-mail records, in about 2009, TAYLOR and RUZICKA set up a new company, Archer Acoustics, that was used in the same fashion as Claris to leverage Starkey's pricing discount with Sonion into commissions for TAYLOR, HAGEN, and RUZICKA. An e-mail dated April 5, 2009, from TAYLOR to RUZICKA states:

Hi Jerry.... Just some quick thoughts as I start to get everything set up for Archer Acoustics this week. Thought I would run these by you to make sure you are OK with everything, and/or have any comments/etc. Regards jT

The e-mail contains an attachment "Archer Acoustics.doc" with several bullet points including: "Set up a new company"; "will try to find a way for anonymity"; "will set up Archer Acoustics as part of the Starkey pricing group within Sonion customer group"; "...will receive orders from customers and input...as sales order (at market price)"; "...will place POs with Sonion for the subject units (at Starkey price)."

65. Archer Acoustics LLC was incorporated in July 2009 in the State of Minnesota. RUZICKA and TAYLOR each owned 50% of the company and were the only two officers of Archer Acoustics.

66. An e-mail dated January 19, 2011 from TAYLOR to HAGEN states: "Hi Larry, here is the quotation I sent to ExSilent for the Maric assembly. Just an FYI, there is some 'headroom' in this for Archer... Regards jT." A response to this e-mail was sent on



January 19, 2011, from the e-mail address lars@larstomasconsulting.com that states:  
“Cool. We need to have Geronimo send the bills Larry Hagen....”

67. A US Bank checking account was opened by TAYLOR on September 16, 2009, for the business name Archer Acoustics LLC and the business address 8572 Highway 212, Cologne, MN 55322 (TAYLOR’s home address). A review of the bank account shows that in 2011 and 2012 Archer Acoustics received payments of over \$167,000 from ExSilent.

68. Beginning in approximately November 2011, Archer Acoustics directed customers to order products directly from Sonion, and then Archer Acoustics negotiated the payment of “product rebates” from Sonion to Archer Acoustics based on the total sales. The product rebates paid to Archer Acoustics by Sonion totaled in excess of \$270,000 for the years 2012 to 2015.

69. An e-mail dated January 24, 2015, from TAYLOR to RUZICKA with the subject line “Archer Acoustics” stated: “As Larry gets a cut on customers he ‘brings to the party’, I paid him his ‘share’ yesterday which amounted to \$13,151.07 for all of 2014.”

70. A review of the Archer Acoustics LLC bank account revealed withdrawals benefitting TAYLOR (approximately \$219,690), RUZICKA (approximately \$87,690), and HAGEN (approximately \$20,583) from 2009 to 2015. Another approximately \$40,000 was sent from Archer Acoustics to Claris during this time period as well.

### **Termination of RUZICKA and NELSON**

71. According to Austin, in about August 2015, a Starkey employee reported to Austin that RUZICKA had approached the employee to join a new company, to be headed by RUZICKA, that would compete with Starkey in providing goods and services related to hearing aids. Austin hired a law firm to investigate that allegation. Over the next several weeks, the law firm investigated and uncovered evidence indicating that RUZICKA, NELSON, and several other senior executives planned to form a competing venture.<sup>14</sup>

72. Documents related to this new venture were discovered by Starkey's investigators on RUZICKA's work laptop, a MacBook computer, after he was terminated. According to Chris McCormick, Starkey's Director of Marketing, RUZICKA had in recent years precluded Starkey from pursuing certain technology development projects. Law enforcement has determined, based on documents recovered from RUZICKA's computer, that RUZICKA was in the process of establishing a new company that would compete with Starkey and that the technology development plans that RUZICKA precluded Starkey from pursuing were relevant to RUZICKA's new company.

73. According to Austin, on or about September 8, 2015, after learning about portions of the fraudulent scheme described above, Austin personally fired both RUZICKA and NELSON. Later that evening, at RUZICKA's request, Austin met with RUZICKA at Campiello's Restaurant in Eden Prairie, Minnesota. Although another Starkey employee accompanied Austin to this meeting, RUZICKA asked the employee to leave prior to

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<sup>14</sup> Additionally, the law firm uncovered transactional documents relating to the Northland Hearing reacquisition.

talking with Austin. During the ensuing meeting, RUZICKA asked if Austin would consider the money that RUZICKA had taken as his “pension” rather than the 10-year payment plan contemplated in RUZICKA’s employment agreement. Austin refused, telling RUZICKA that he (Austin) did not yet know the full extent of the scheme.

74. According to Austin, on or about September 9, 2015, Austin met with NELSON at a Starkey corporate residence located in Eden Prairie, MN. This meeting with NELSON was audio recorded, a copy of which was provided to the government. During this meeting, Austin asked NELSON if he (NELSON) had the money. NELSON replied that he (NELSON) had most of the money that was paid to him. Austin also asked NELSON where this money was located. NELSON replied that the money is in investments. NELSON also stated that RUZICKA came to him (NELSON) regarding the Northland Hearing deal, and claimed that he (NELSON) thought Austin knew about the restricted stock options with Northland Hearing.

**INFORMATION REGARDING ITEMS TO BE SEIZED**

75. Based on my training and experience in conducting similar investigations, your affiant knows:

a. Individuals, including those receiving income from fraud schemes, often maintain records evidencing their possession of assets and personal financial transactions. These items often include personal financial statements, receipts, invoices, bank statements and records, bank money order and cashier’s check receipts, property records, investment records, stock and bond records, tax records, correspondence, diaries,

and handwritten notes. These records are often maintained for extended periods of time, often years.

b. Businesses generally maintain or keep journals, ledgers, bank statements and records, receipts, invoices and other documents evidencing the receipts and disbursements of funds, inventories, assets of the business and personnel information. These records are usually kept and maintained for extended periods of time, often several years.

c. It is a common practice for personal and business records to be maintained, in part, within information associated with online file storage accounts used by such individuals and businesses.

#### **BACKGROUND CONCERNING E-MAIL**

76. In my training and experience, I have learned that Microsoft provides a variety of on-line services, including electronic mail (“e-mail”) access to subscribers through the “Hotmail” platform. The Service Providers allow subscribers to obtain e-mail accounts at various domain names, like the e-mail accounts listed in Attachment A. Subscribers obtain an account by registering with the Service Providers. During the registration process, the Service Providers ask subscribers to provide basic personal information. Therefore, the computers of Microsoft are likely to contain stored electronic communications (including retrieved and unretrieved e-mail for subscribers) and information concerning subscribers and their use of Microsoft’s services, such as account access information, e-mail transaction information, and account application information.

In my training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account's user or users.

77. In my training and experience, e-mail subscribers can also store files in addition to e-mails, such as address books, contact lists, calendar data, pictures (other than ones attached to e-mails), and other files, on servers maintained and/or owned by Microsoft. In my training and experience, evidence of who was using an e-mail account may be found in address books, contact lists, e-mail in the account, and attachments to e-mails, including pictures and files.

78. In my training and experience, e-mail providers generally ask their subscribers to provide certain personal identifying information when registering for an e-mail account. Such information can include the subscriber's full name, physical address, telephone numbers and other identifiers, alternative e-mail addresses, and, for paying subscribers, means and source of payment (including any credit or bank account number). In my training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account's user or users. Based on my training and experience, I know that even if subscribers insert false information to conceal their identity, I know that this information often provides clues to their true identity, location or illicit activities.

79. In my training and experience, e-mail providers typically retain certain transactional information about the creation and use of each account on their systems. This

information can include the date on which the account was created, the length of service, records of log-in (i.e., session) times and durations, the types of service utilized, the status of the account (including whether the account is inactive or closed), the methods used to connect to the account (such as logging into the account via the provider's website), and other log files that reflect usage of the account. In addition, e-mail providers often have records of the Internet Protocol address ("IP address") used to register the account and the IP addresses associated with particular logins to the account. Because every device that connects to the Internet must use an IP address, IP address information can help to identify which computers or other devices were used to access the e-mail account.

80. In my training and experience, in some cases, e-mail account users will communicate directly with an e-mail service provider about issues relating to the account, such as technical problems, billing inquiries, or complaints from other users. E-mail providers typically retain records about such communications, including records of contacts between the user and the provider's support services, as well records of any actions taken by the provider or user as a result of the communications. In my training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account's user or users.

81. As explained herein, information stored in connection with an e-mail account may provide crucial evidence of the "who, what, why, when, where, and how" of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my

training and experience, the information stored in connection with an e-mail account can indicate who has used or controlled the account. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence. For example, e-mail communications, contacts lists, and images sent (and the data associated with the foregoing, such as date and time) may indicate who used or controlled the account at a relevant time. Further, information maintained by the e-mail provider can show how and when the account was accessed or used. For example, as described below, e-mail providers typically log the Internet Protocol (IP) addresses from which users access the e-mail account along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the e-mail account access and use relating to the crime under investigation. This geographic and timeline information may tend to either inculcate or exculpate the account owner. Additionally, information stored at the user’s account may further indicate the geographic location of the account user at a particular time (e.g., location information integrated into an image or video sent via e-mail). Last, stored electronic data may provide relevant insight into the e-mail account owner’s state of mind as it relates to the offense under investigation. For example, information in the e-mail account may indicate the owner’s motive and intent to commit a crime (e.g., communications relating to the crime), or consciousness of guilt (e.g., deleting communications in an effort to conceal them from law enforcement).

### **DURATION OF E-MAILS**

82. In general, an e-mail that is sent from or to a domain file uploaded by a subscriber is stored in the subscriber's account on the Microsoft servers until the subscriber deletes the file. If the subscriber does not delete the file, the file can remain on Microsoft's servers indefinitely. Even if the subscriber deletes the file, it may continue to be available on Microsoft's servers for a certain period of time.

### **PRESERVATION LETTER**

83. In general, an email that is sent from or to a domain files uploaded by a subscriber is stored in the subscriber's account on Microsoft's servers until the subscriber deletes the file. If the subscriber does not delete the file, the file can remain on Microsoft servers indefinitely. Even if the subscriber deletes the file, it may continue to be available on Microsoft's servers for a certain period of time.

84. On April 11, 2016, a Preservation Request was sent to Microsoft requesting preservation of all account information and data associated with the email address Geronimo\_275@hotmail.com for a period of 90 days.

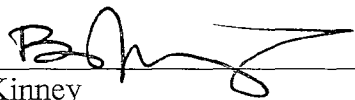
85. On July 7, 2016, a Preservation Request Extension was sent to Microsoft requesting preservation of all account information and data associated with the email address Geronimo\_275@hotmail.com for a period of an additional 90 days. Microsoft confirmed receipt of the request on July 11, 2016, granting the requested extension.



CONCLUSION

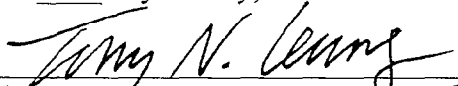

86. Based on the facts set forth above, and based on my training, experience, knowledge, and the aforementioned facts of this investigation, there is probable cause to believe that RUZICKA, TAYLOR, HAGEN, and others have committed criminal offenses, including mail fraud (18 U.S.C. § 1341), wire fraud (18 U.S.C. § 1343), conspiracy (18 U.S.C. § 371), and money laundering and conspiracy to commit money laundering (18 U.S.C. §§ 1956 & 1957), and there is probable cause to believe that evidence of the above offenses can be found within information associated with the Subject E-Mail Account.

Further your Affiant sayeth not.

  
\_\_\_\_\_  
Brian J. Kinney  
Federal Bureau of Investigation

SUBSCRIBED and SWORN to before me

this 22 day of July, 2016.

  
\_\_\_\_\_  
The Honorable ~~Becky R. Thornton~~ Tony N. Leung  
U.S. Magistrate Judge 

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

16mj495 (TNL)

IN THE MATTER OF THE SEARCH ) **FILED UNDER SEAL**  
OF INFORMATION ASSOCIATED ) PETITION OF THE UNITED STATES  
WITH THE E-MAIL ADDRESS: ) FOR AN ORDER SEALING SEARCH  
Geronimo\_275@hotmail.com, THAT IS ) WARRANT, AFFIDAVIT, RETURN,  
STORED AT PREMISES ) PETITION AND ORDER FOR  
CONTROLLED BY MICROSOFT ) SEALING  
CORPORATION )

COMES NOW the United States of America by its undersigned attorneys and in support of its Petition for an Order Sealing Search Warrant, Affidavit, Return, and Petition in the above-captioned matter, states as follows:

1. On 22nd day of July, 2016, this Court issued a Warrant authorizing the search of information associated with the e-mail address Geronimo\_275@hotmail.com that is stored at premises controlled by Microsoft Corporation (“Microsoft”).

2. The Affidavit of Special Agent Brian J. Kinney submitted in support of the Search Warrant, sets forth facts regarding an ongoing investigation into Mail Fraud in violation of 18 U.S.C. 1341, among other criminal statutes. The affidavit set forth facts to support the conclusion that evidence of the aforementioned offenses could be found on the above-described device, and that the items to be seized are subject to seizure pursuant to 21 U.S.C. § 853(f), 18 U.S.C. § 982(b)(1), and 18 U.S.C. § 981(b).

3. The affidavit submitted in support of the search warrants sets forth detailed facts regarding individuals who may currently be unaware that they are a target or subject of the investigation. For example, the affidavit sets forth specific facts about Jeff Longtain’s involvement with a major transaction that is a significant focus of the

investigation. The government's investigation regarding Longtain is ongoing and the government intends to approach Longtain in the very near future regarding potential cooperation. If the Court were to unseal the affidavit at this time, Longtain would undoubtedly gain access to the affidavit, which would compromise an ongoing investigation insofar as it would allow Longtain an opportunity to frame his statement so that it conforms to the facts set forth in the affidavit and would also provide Longtain with an opportunity to destroy evidence or otherwise obstruct the investigation. These concerns are based on Longtain's specific conduct. Law enforcement obtained Longtain's computer from Starkey and determined that Longtain encrypted the computer before he was fired. Law enforcement was ultimately able to search the computer and in that search recovered a text message sent to Longtain by Ruzicka on September 11, 2015, shortly after Ruzicka was fired but before Longtain was fired, stating "Don't send anything from your work computer. They will likely seize it. Take all personal stuff off." Law enforcement has also determined that Longtain deleted emails from the Starkey network that he had sent and received during a time period relevant to the Northland transaction. The steps Longtain has already taken to conceal or destroy evidence were made without knowledge of the scope of the investigation; accordingly, disclosure of the information contained in the affidavit would compromise details about the nature, extent, and scope of the investigation and create substantial risk that further steps could be taken to compromise the investigation.

4. Susan Mussell, who is also discussed in the affidavit, has yet to provide a full statement to the government. The government intends to seek testimony from Mussell

within the next month. As is the case regarding Longtain, disclosure of the affidavit to Mussell could compromise the investigation in that these individuals would then have the opportunity to conform their statements to the facts set forth in the affidavit.

5. The search warrant documents presented to this Court for *in camera* review include detailed and highly sensitive investigative information. Disclosure of the information would jeopardize an ongoing investigation into alleged criminal offenses.

6. Nondisclosure of the search warrant documents is necessary to prevent the ongoing investigation from being compromised. Immediate public filing of the search warrant documents would, *inter alia*, compromise details about the nature, extent, and scope of the investigation; hinder post-execution investigation into the criminal acts described in the search warrant Affidavit, including the pursuit of leads developed as a result of the search warrant itself; alert targets known and unknown about the nature, extent, and scope of the investigation; and provide witnesses, subjects, and targets, known and unknown, an opportunity to destroy evidence or otherwise obstruct the investigation, change patterns of behavior, notify co-conspirators, dissipate assets, flee the jurisdiction, and/or ascertain other likely targeted places to be searched.

7. The Court's power to prevent disclosure of its files, especially for a limited period of time, is well established. This general power has been recognized by the United States Supreme Court.

It is uncontested, however, that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over some records and files and access has been denied where court files might have become a vehicle for improper purposes.

*Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978). The Eighth Circuit has recognized the Court's specific power to restrict access to search warrant documents like those at issue here:

We hold that the qualified first amendment right of public access extends to the documents filed in support of search warrants and that the documents may be sealed if the district court specifically finds that sealing is necessary to protect a compelling government interest and that less restrictive alternatives are impracticable.

*In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 574 (8th Cir. 1988).

8. The Eighth Circuit and district courts within the Circuit have recognized that the circumstances surrounding ongoing investigations constitute compelling government interests warranting the sealing of search warrant documents. For example, the Eighth Circuit has approved sealing search warrant documents that "describe[d] in detail the nature, scope and direction of the government's investigation and the individuals and specific projects involved," resulting in "substantial probability that the government's ongoing investigation would be severely compromised if the sealed documents were released." *Id.* at 574. Moreover, the Eighth Circuit has recognized that search warrant affidavits permeated with references to individuals other than the subjects of the search warrant and/or with information revealing the nature, scope and direction of the government's ongoing investigation may be sealed not only because they present compelling government interests justifying sealing, but also because less restrictive alternatives to sealing are in such circumstances impracticable. *Gunn*, 855 F.2d at 574.

9. Based upon the foregoing and all the files and proceedings to date, the United States respectfully requests that this Court issue an Order Sealing the Warrant, Application, Affidavit of Special Agent Brian Kinney, Return, this Petition, and the Sealing Order until the close of business on January 21, 2017, unless a compelling interest is shown by the United States for a continuation of the sealing.

Dated: July 22, 2016

Respectfully submitted,

ANDREW M. LUGER  
United States Attorney

A handwritten signature in black ink, appearing to read 'B. F. Langner', is written over the typed name of Benjamin F. Langner.

BY: BENJAMIN F. LANGNER  
Assistant U.S. Attorney  
Attorney ID No. 6277851-IL

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

16-MJ-495 (TUL)

IN THE MATTER OF THE SEARCH ) FILED UNDER SEAL  
OF INFORMATION ASSOCIATED )  
WITH THE E-MAIL ADDRESS: ) ORDER FOR SEALING  
Geronimo\_275@hotmail.com, THAT )  
IS STORED AT PREMISES )  
CONTROLLED BY MICROSOFT )  
CORPORATION )

This Court, having reviewed the Petition of the United States herein, finds that the United States has shown a compelling interest in the sealing of documents in the above-captioned matter because:

- a. Nondisclosure of the search warrant documents is necessary to prevent the ongoing investigation from being compromised.
- b. The search warrant documents reveal the nature, scope, and direction of the government's ongoing investigation. *See In Re Search Warrant . . . Office of Gunn*, 855 F.2d 569, 574 (8th Cir. 1988).


This Court also finds that less restrictive alternatives to sealing are impracticable or not appropriate.

It is therefore:

ORDERED that all documents filed in the above-captioned matter are hereby sealed until the close of business on January 21, 2017.

IT IS FURTHER ORDERED that these documents will be unsealed at the above time unless further compelling interest is shown by the United States for continuing this Order for an additional period of time.

Dated: July 22, 2016

  
\_\_\_\_\_  
THE HONORABLE TONY N. LEUNG  
UNITED STATES MAGISTRATE JUDGE