

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to both 28 U.S.C. §1331 and 31 U.S.C. §3732, the latter of which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§ 3729 and 3730.

2. This Court has personal jurisdiction over the defendants pursuant to 31 U.S.C. §3732(a) because that section authorizes nationwide service of process and because the defendants have minimum contacts with the United States.

3. Venue is proper in this District pursuant to 31 U.S.C. 3732(a) because all of the defendants reside within this District and transact business within this District, and because the acts proscribed by 31 U.S.C. §3729 occurred within this District.

II. THE PLAINTIFFS

4. Plaintiff/Relator JEFF KENNER (hereinafter “Mr. Kenner”) is an individual residing at [REDACTED], and is a former employee of defendant Sioux Manufacturing Corporation.

5. Plaintiff/Relator TAMRA ELSHAUG (hereinafter “Ms. Elshaug”) is an individual residing at [REDACTED], and is a former employee of defendant Sioux Manufacturing Corporation.

III. THE DEFENDANTS

6. Defendant SPIRIT LAKE TRIBE (hereinafter “the Tribe”) is an Indian Tribe, which is recognized by the U.S. Department of The Interior, Bureau of Indian Affairs.

7. At all times described within this Complaint, the Tribe occupied a reservation at Fort Totten, in the County of Benson, State of North Dakota, under a treaty which was entered between the United States and the Sisseton and Wahpeton Sioux Indians in 1867.

8. Defendant SIOUX MANUFACTURING CORP. (hereinafter “SMC”) is chartered as a tribal corporation and a government subdivision of the Tribe.

9. At all times described within the Complaint, the principal place of business of SMC was situated on the Fort Totten Indian Reservation at Fort Totten, in the County of Benson, State of North Dakota.

10. Defendant CARL R. McKAY is an individual residing at [REDACTED]

11. At all times described within the Complaint, defendant Carl R. McKay was the President of SMC, with an actual place of employ at Fort Totten, North Dakota.

12. Defendant HYLLIS DAUPHINAIS is an individual residing at [REDACTED]who was, and remains employed as production manager of SMC at Fort Totten, North Dakota.

IV. INTRODUCTION

13. This is an action to recover damages and civil penalties on behalf of the United States of America arising from false and/or fraudulent statements, records and claims made and caused to be made by the defendants and/or their agents, employees and co-conspirators in violation of the Federal False Claims Act, 31 U.S.C. §3729 et seq., as amended (“the FCA” or “the Act”).

14. This *qui tam* case is brought against a federally recognized Indian Tribe, The Spirit Lake Tribe, its wholly owned-corporation and alter ego, Sioux Manufacturing Corporation (SMC), and two agents and employees of the Tribe and SMC, all of whom are highly sophisticated, and who knowingly defrauded the U.S. Treasury of sums equaling or exceeding one hundred fifty million (\$150,000,000.00) dollars.

15. Through defendant Sioux Manufacturing Corporation, the defendants entered several military defense contracts with the U.S. Department of Defense (“the DOD”).

16. Under those contracts, the defendants contracted to manufacture and provide the DOD with *Kevlar* body armor, which the defendants knew was to be installed in military helmets to be worn by virtually all U.S. Soldiers fighting in Iraq and Afghanistan.

17. *Kevlar*, is a high strength aramid fiber manufactured by the *DuPont* Corporation.

18. When employed in the construction of military armor, such as helmets, *Kevlar* threads are woven into a dense fabric in a manner which is specifically designed for ballistic protection.

19. When *Kevlar* is woven as a cloth and layered, a bullet or other projectile encounters many threads at once. As *Kevlar* does not stretch, when a bullet strikes *Kevlar* cloth, the energy is transferred from the threads which are initially struck, to the other threads within the cloth.

20. The denser the weave (*i.e.* the more threads per square inch) the more resistance the bullet encounters, and the greater the number of threads available to receive the transfer of energy from the impact of the bullet.

21. The number of threads woven per inch in either the lengthwise direction (the “*warp*”) or the crosswise direction (the “*fill*”) of the woven fabric is known as the “thread count.”

22. With regard to the manufacture of military helmets to be worn by U.S. Soldiers, the DOD has approved the use of *Kevlar* within such helmets, subject to strict specifications which prescribe the manufacture of the *Kevlar* aramid cloth which is to be incorporated as the armor contained within such helmets.

23. Given the critical function of helmets as the primary armor protection for U.S. Soldiers, the DOD has included within those strict specifications the minimum weave density of any and all aramid cloth employed in the manufacture of such helmets by specifically setting minimum thread counts, for both *warp* thread count, and *fill* thread count.

24. Moreover, given the fact that a less dense weave count would afford less ballistic armor protection to U.S. soldiers, the DOD affirmatively assigned a “classification” to the importance of maintaining the minimum weave composition specified for the material, as “critical.”

25. The specifications adopted by the DOD further require that the armor contained within each U.S. soldier's helmet consist of 19 layers of such *Kevlar*, with each and every one of such layers ("shields") consisting of *Kevlar* cloth woven at a density not less than the minimum weave density which the DOD had deemed as critical.

26. During the past six years, the defendants contracted with the DOD to manufacture and provide all, or virtually all, of the *Kevlar* armor which was to be installed within military helmets to be worn by U.S. Soldiers fighting in Iraq and Afghanistan.

27. At the time that the defendants contracted to provide such *Kevlar* body armor to the DOD, *Kevlar* was both expensive, and in short supply.

28. In fact, by 2003, the market shortage of *Kevlar* had become so substantial, the *Dupont* Corporation implemented a seventy million (\$70,000,000.00) dollar upgrade to its own manufacturing facility, to increase its *Kevlar* production a modest ten (10%) percent (*See Exhibit "E"*).

29. This short market supply of *Kevlar* presented an obstacle to the business interests of the defendants (*See Exhibits "E" and "F"*), who needed *Kevlar* to not only fulfill initial orders it received from the DOD, one of which included a seventy million (\$70,000,000.00) dollar order received in 2003 (*See Exhibit "A"*), but to also fill subsequent orders which it was desirous of receiving, and which would ultimately grow to total in excess of one hundred and fifty million (\$150,000,000.00) dollars.

30. To fill the government's initial orders, and to be able to accept additional orders despite the shortage (and expense) of *Kevlar*, the defendants decided to defraud the DOD by deliberately implementing a systematic reduction in the amount of *Kevlar* it employed in the manufacture of the *Kevlar* armor it produced and sold to the DOD, and to conceal the reduction of *Kevlar* from the U.S. government.

31. To implement this systematic reduction in *Kevlar* contained in the armor they were selling to the U.S. military, the defendants physically set weaving looms within their manufacturing facility to reduce the density of the *Kevlar* fabric being woven by the defendants, below the minimum density which the Department of Defense had deemed as "critical."

32. By setting their looms to weave the *Kevlar* fabric at a reduced density, the defendants "shorted" the *Kevlar* within the armor it manufactured and sold to the U.S. Department of Defense for each and every military helmet, as follows.

33. The defendants deliberately and systematically shorted all "Small" military helmets used by the DOD by approximately 9,526 strands of *Kevlar* per helmet, systematically shorted all "Medium" military helmets used by the DOD by approximately 9,856 strands of *Kevlar* per helmet, systematically shorted all "Large" military helmets used by the DOD by approximately 10,547 strands of *Kevlar* per helmet, and systematically shorted all "Extra Large" military helmets used by the DOD by approximately 12,843 strands of *Kevlar* per helmet.

34. This dramatic "shorting" and reduced density of the *Kevlar* fabric reduced the ballistic protection afforded by each and every one of the 19 layers of *Kevlar* contained within each military helmet, below the specific requirements of the contracts between the defendants and the U.S. Department of Defense.

35. Upon manufacturing this reduced-density *Kevlar* fabric, the defendants coated the fabric with resin, shipped it to an agency of the DOD, and submitted invoices together with false certifications representing that the armor was manufactured in accord with the specifications of the contracts between the parties, while affirmatively knowing that to be false.

36. [Redacted]

37. To date, the U.S. Department of Defense has paid the defendants in excess of one hundred fifty million (\$150,000,000.00) dollars for such *Kevlar*, which is currently being worn as the sole armor contained within the helmets of most, if not all, U.S. soldiers currently fighting in Iraq and Afghanistan.

38. Upon information and belief, none of those helmets meets the *minimum* armor specifications which were identified as “*critical*” under the contract between the parties, nor contains the *Kevlar*, nor affords the armor protection, which the U.S. Department of Defense has paid for.

39. As a result of the defendants fraudulent and deceptive conduct, the U.S. Treasury has suffered not less than one hundred fifty million (\$150,000,000.00) dollars in damages.

40. Plaintiff/Relator Jeff Kenner was an employee of defendant SMC for twenty (20) years, from 1985 through 2005, during which time he was ultimately promoted to Supervisor of SMC’s weaving department, the department of SMC which wove the *Kevlar* cloth which is the subject of this action.

41. Plaintiff/Relator Tamra Elshaug was an employee of SMC for twenty six (26) years, from 1979 through 2005, during which time she was ultimately promoted to Materials

Purchasing Manager, who was responsible for purchasing the *Kevlar* thread which defendant SMC wove into the fabric which it sold to the DOD.

42. Both of the plaintiffs were terminated by the defendants on November 1, 2005 after the plaintiffs had learned that SMC had been defrauding the U.S. government in the manner described herein, and raised objection to same.

43. The False Claims Act was originally enacted during the Civil War, for the purpose of being employed as the primary tool to fight fraud perpetrated against the U.S. Government by military defense contractors.

44. In 1986, Congress amended the Act intending to create increased incentives for individuals with knowledge of such fraud against the government to disclose the information without fear of reprisals or government inaction, and to encourage the private bar to commit legal resources to prosecute fraud on the governments' behalf.

45. The Act allows any person having information about false or fraudulent claims to bring an action for himself and the U.S. Government, and to share in any recovery.

46. The Act requires that the Complaint be filed under seal for a minimum of 60 days (without service on the defendant during that time).

47. Based upon these provisions, the *qui tam* plaintiffs seek through this action to recover damages and civil penalties arising from the defendants' conspiracy to defraud the federal government as further described herein below.

V. THE FACTS

A. The Spirit Lake Tribe

48. Defendant SPIRIT LAKE TRIBE (hereinafter “the Tribe”) is a federally recognized Indian Tribe, which is recognized by the U.S. Department of the Interior, Bureau of Indian Affairs (*See Exhibit “G” at page “9”*).

49. The Tribe occupies a reservation at Fort Totten, North Dakota, under a treaty which was entered between the United States and the Sisseton and Wahpeton Sioux Indians in 1867.

50. The Tribe is governed by a Tribal Council, which consists of six (6) members.

51. Under authority of the Tribal Counsel, the Tribe has established, and owns and operates not less than three (3) wholly owned commercial enterprises (*See Exhibit “H”*).

52. They include: defendant Sioux Manufacturing Corporation (SMC), a governmental subdivision of the Tribe which manufactures military defense products within a two hundred and fifty (250,000) thousand square foot manufacturing facility owned by the defendants (*See Exhibit “D”*), the Spirit Lake Casino & Resort and Marina (*See Exhibit “I”*) and Varsity Bag Inc. (*See Exhibit “J”*).

B. Sioux Manufacturing Corporation

53. In or about 1974 the Tribal Counsel caused the creation of SMC as a tribal

corporation and governmental subdivision of the Tribe, organized under the Tribe's Law and Order Code.

54. By authority of the Tribal Counsel, SMC commenced operation, under the original name of "Devil's Lake Sioux Manufacturing" on twenty-seven acres of land held in trust for the Tribe by the United States.

55. In accord with its existence as a subdivision of the Tribe, Defendant SMC's Charter requires that its Board of Directors must, at all times, include all of the six (6) sitting members of the Sioux Tribal Council.

56. Significantly, the allegations set forth in paragraphs "53" through "55" immediately hereinabove are facts which SMC and the Tribe have represented to The United States Court of Appeals For the Seventh Circuit, and they have further represented to the Court of Appeals that SMC and the Tribe are to be considered one and the same entity, and/or should be considered as "interchangeable" in Alzheimer & Gray v. Sioux Manufacturing Corporation, 983 F.2d 803, 809 (7th Cir 1993).

57. At all times described herein, the Tribe maintained actual and complete control over all aspects of SMC and its business operations.

58. This included actual control over its Board of Directors, upon which every member of the Tribe's Council sits as a Director, and who collectively represent a two-thirds majority of the SMC Board (*See* Exhibit "K" at its first page, and page "ii"), and actual control over SMC's day-to-day business operations.

C. The Employ of *Kevlar* in the Manufacture of Military Helmets for the United States Department of Defense

59. In the 1970's the U.S. Army completed design and development work on a new helmet to replace the M1 "steel pot" that had been in service since World War II.

60. The new style helmet, similar in shape to old German Helmets, was named the *PASGT*, an acronym for *Personal Armor System Ground Troops*.

61. The PASGT is made from layers of resin coated woven fabric produced from a "stronger than steel" Dupont aramid fiber known as *Kevlar*.

62. When employed in the construction of military armor, such as military helmets, *Kevlar* threads are woven into a dense fabric in a manner which is specifically designed for ballistic protection.

63. When *Kevlar* is woven as a cloth and layered, a bullet or other projectile encounters many threads at once. As *Kevlar* does not stretch, when a bullet strikes *Kevlar* cloth, the energy is transferred from the threads which are initially struck, to the other threads within the cloth.

64. The denser the weave (i.e. the more threads per square inch) the more resistance the bullet encounters, and the greater the number of threads available to receive the transfer of energy from the impact of the bullet.

65. The number of threads woven per inch in either the lengthwise direction (the "warp") or the crosswise direction (the "fill") of the woven fabric is known as the "thread count."

Helmet & Cloth Specifications MIL-H-44099A & MIL-C-44050A

66. The Department of Defense has approved the use of *Kevlar* as the primary armor of military helmets for U. S. Soldiers, subject to strict specifications for both the helmets, and the *Kevlar* cloth with which they are constructed.

67. With regard to PASGT helmets, the DOD adopted Military Specification MIL-H-44099A which prescribes virtually every detail of the specifications to which military helmets are to be constructed for use by the U.S. Military (A true copy of MIL-H-44099A is annexed hereto as Exhibit "B").

68. With regard to the aramid (*Kevlar*) cloth which is to be woven and manufactured *into* such helmets, the DOD adopted Military Specification MIL-C-44050A which prescribes virtually every detail of the specifications to which the aramid cloth is to be manufactured for subsequent use in the manufacture of military helmets for the DOD (A true copy of MIL-C-44050A is annexed hereto as Exhibit "C").

69. MIL-H-44099A expressly indicates that it contains the DOD's prescribed specifications for ballistic protective helmets consisting of a laminated coated aramid cloth shell. (See Exhibit "B" page 1 at 1.1 entitled "Scope").

70. MIL-H-44099A specifies that the type of aramid ballistic cloth to be employed in the manufacture of such helmets is of the type specified under Military Specification MIL-C-44050 (See Exhibit "B" at page 2, where the third specification under the word "MILITARY" is specification "MIL-C-44050," to the right of which is stated "Cloth, Ballistic, Aramid").

71. MIL-H-44099A further specifies that the type of aramid ballistic cloth to be

employed in the manufacture of such helmets “*shall conform to Type II, class I of MIL-C-44050*” (See Exhibit “B” at page 4, section 3.3.1 “Cloth, ballistic aramid”) [italics added]

72. MIC-C-44050A’s specifications for “Type II” cloth are set forth on page 4 under a heading entitled “Physical requirements” (See Exhibit “C” at page 4).

73. MIC-C-44050A explicitly mandates that Type II aramid cloth be woven to a density consisting of: (a) a minimum “warp” count of 35 yarns (threads) per inch; and (b) a minimum “filling” count of 35 yarns (threads) per inch (See Exhibit “C,” page 4).

74. Under MIL-H-44099A, after the aramid cloth is woven at a weave density not less than the thread counts set forth in Table I of MIC-C-44050A, the cloth is to be installed in a pre-specified number of layers in a pre-approved configuration (See Exhibit “B” at pages 6-7 under section “3.4.1.1.2”).

75. As explicitly provided in MIL-H-44099A, the U.S. DOD has identified three specific potential defects in the manufacture of helmets which defects the DOD has classified as “critical.”

76. As set forth in Table II, the three defects which the DOD has specifically classified as “critical” include: (a) if the number of layers of cloth is not approved, (b) if *the composition of the material is not as specified (i.e. the weave density or thread counts are less than the minimums specifically set forth in MIC-C-44050A)*, or (c) if the final configuration (of the layers of *Kevlar*) is not as approved (See Exhibit “B” at page 13 under “Table II” entitled “Preform assembly defects”).

77. Viewed collectively, MIL-H-44099A and MIL-C-44050A not only require that

any *Kevlar* aramid fabric employed in the manufacture of helmets for the U.S. DOD meet the minimum weave density of 35 x 35 threads per square inch, but further provide that the failure to maintain such minimum thread counts would constitute a “critical” defect in the manufacture of such helmets.

78. Significantly, MIL-H-44099A also affirmatively mandates that any manufacturer under contract with the DOD must inspect the aramid fabric for the defects listed in Table II, and affirmatively requires that any such contractor reject within its manufacturing facility, any fabric which does not meet the required weave composition specifications (See Exhibit “B” at page 13, section “4.4.2”).

D. The Tribe and SMC’s pursuit of military contracts for the manufacture of *Kevlar* helmets

79. Being possessed of a desire to pursue military defense contracts through Sioux Manufacturing Corporation (SMC) the defendants undertook substantial efforts to position themselves for entry into the “military helmet business.”

80. As explained by the defendants:

“[By 1980][SMC] had been positioning itself for entry into the Military helmet business for several years by following the Military’s development and test program, investing in capital improvements, increasing the engineering staff, conducting R & D projects with composite materials and running cost and feasibility models.”

See Exhibit “K” at page 9.

81. In 1980, SMC (then known as Devils Lake Sioux Manufacturing Corporation, or

“DLSSMC”) was awarded its first contract from the DOD, to manufacture 7,500 complete helmets. (See Exhibit “K” at page 9).

82. For its first helmet contract with the DOD, SMC purchased *Kevlar* fabric from a weaving house, which was first drop-shipped to a resin coater, and then shipped to SMC which incorporated the fabric into helmets, which it then sold to the DOD. (See Exhibit K” at page 10).

83. Recognizing that this practice was “not the most cost effective” means of manufacture, in 1981 the defendants began to study the feasibility of “doing the weaving and coating work in house” (See Exhibit “K” at page 10).

84. By 1984, SMC’s sales had exceeded two hundred million (\$200,000,000.00) dollars.

85. That year the defendants caused SMC to commence its own, in house, *Kevlar* weaving operation.

86. As heralded within a 25 year company report presented to SMC by the Tribe:

“Installation of the twister, warper, beamer and looms was completed in the spring of [1984] and the first MIL-C-44050, *Kevlar* 29 fabric came off the looms in April.”

(See Exhibit “K” at page 13) [emphasis added].

87. In the spring of 1984, the defendants caused the installation of a “coating line” within SMC’s facility, and the first *Kevlar* fabric was successfully coated with resin in SMC’s facility in September 1984. (See Exhibit “K” at page 14).

88. 1985 was a self-described “banner year” for SMC (See Exhibit “K” at page 15).

89. With three “mature production lines in full operation,” one of which was the helmet line, SMC set new records for annual, quarterly and monthly sales, profits, dividends and productivity (See Exhibit “K” at page 15).

90. Those sales included two hundred and eight thousand (208,000) helmets completed in 1985 alone, and the award of a new contract for an additional three hundred thousand (300,000) units (See Exhibit “K” at page 15).

E. The Defendants Contract to Manufacture and Provide Kevlar Shields to the DOD

91. During the past six (6) years, the Tribe, through SMC, has entered numerous contracts with the DOD including, but not limited to, contracts numbered 4600001010 (entered in or about 2002), and 4600001304 (entered in or about 2003), to manufacture and provide the DOD with sets of *Kevlar* cloth armor (referred to herein as *Kevlar* “shields”).

92. Under the terms of such contracts, each set of *Kevlar* shields was to consist of a set of nineteen (19) individual *Kevlar* shields cut to clearly delineated specifications, for the purpose of being thereafter installed as the sole armor contained within military helmets worn by U.S. Soldiers.

93. In entering such contracts, the defendants affirmatively, explicitly and repeatedly agreed to manufacture such *Kevlar* shields in accord with military specifications MIL-H-44099A and MIL-C-44050A (See Exhibit “A” at pages 2, 3, 4 wherein under each item number 0001 through 0004, the “Note” section concludes with “All according to FPI drawings . . . and MIL-H-44099A and MIL-C-44050A, and at page 7 under “Statement of Work” at the end of each respective description for pattern sizes “FAB5007” through “FAB5010”).

94. In addition to agreeing to such terms at the time of each initial contract, the

defendants further executed a written "Acceptance of Terms and Conditions" for each and every purchase order they received from the DOD (Annexed collectively hereto as Exhibit "KK" are a fully executed "ACCEPTANCE OF TERMS AND CONDITIONS," and the two DOD purchase orders numbered, DJU4500195554 and DJU4500189969 for which the defendants tendered such Acceptance of Terms to the DOD).

95. Under one such contract alone, the original order totaled one million forty five (1,045,000) thousand sets of *Kevlar* cloth shields, which the defendants were to manufacture and deliver to the DOD, to thereafter be installed into helmets to be worn by U.S. Soldiers. (See Exhibit "A" at pages 2, 3 and 4 under each respective listing for "quantity").

96. The purchase price to be paid by the DOD to the defendants under that respective contract (See Contract/Order 4600001304 annexed hereto as Exhibit "A"), was seventy million six hundred eighty five thousand three hundred thirty six (\$70,685,336.15) dollars and fifteen cents.

97. Upon information and belief during the six (6) year period immediately preceding the date of this complaint, the defendants have manufactured and sold to the U.S. DOD, through SMC, these and other units of *Kevlar* fabric, and have received payments from the U.S. Government equaling or exceeding one hundred fifty million (\$150,000,000.00) dollars in exchange.

F. The Defendants Systematic “shorting” of *Kevlar* below the minimum specifications deemed to be “critical” under SMC’s contracts with the DOD

98. As reflected within Exhibit “C” at page 4, MIL-C-44050A mandates that all *Kevlar* to be employed as armor in military helmets be woven at a critical minimum weave composition of not less than 35 *warp* threads per inch and not less than 35 *fill* threads per inch.

99. As reflected within a 25 year company report prepared by the Tribe, both the Tribe and SMC were fully aware of MIL-C-44050A, and its minimum thread-count specifications, as early as 1984 (*See* Exhibit “K” at page 13).

100. Moreover, having spent years following the U.S. Military’s development and test program of *Kevlar* helmets, the defendants are intimately acquainted with the design and manufacture of *Kevlar* helmets, and their specifications, as set forth within Exhibits “B” and “C.”

101. Given the history set forth hereinabove, the defendants are also intimately aware that the minimum weave composition set forth within MIL-C-44050A has been explicitly classified by the DOD as critical, that under the contracts which the defendants entered with the DOD the defendants were not only required to provide the DOD with *Kevlar* cloth which met these minimum density requirements, but were affirmatively obligated to examine the cloth they were manufacturing to ensure that it met such requirements, and that they had an affirmative contractual obligation to “reject” from its process any woven cloth which did not meet these minimum weave composition requirements. (*See* Exhibit “B” at page 13, Section 4.4.2 and Table II).

102. During the past six years, the U.S. Department of Defense placed numerous orders with the defendants, some of which were placed under a seventy million (\$70,000,000.00) dollar contract, placed in 2003, for the defendants to manufacture and provide *Kevlar* shields which were to be installed within military helmets to be worn by U.S. soldiers fighting the wars in Iraq and Afghanistan (*See Exhibit "A"*).

103. Given the critical function intended for such helmets, the Department of Defense explicitly required, within such contracts and orders, that the *Kevlar* shields to be manufactured and provided by the defendants meet the minimum specifications proscribed in MIL-H-44099A and MIL-C-44050A (*See Exhibit "A"* at pages 2, 3, 4 and 7, wherein at the bottom of each respective item, specified as items 0001, 0002 *etc*, the order provides "All according to FPI drawings BMPL-0077, BMPL-0078, **MIL-H-44099A** and **MIL-C-44050A**") [emphasis added].

104. At the time the defendants received the Department of Defense's order for such *Kevlar* shields there existed a market shortage of *Kevlar* (*See Exhibit "E"*), which was of concern to the defendants since it presented an obstacle to their business interests in capitalizing on the number of shields it could sell to the U.S. Military while the wars in Iraq and Afghanistan remained ongoing (*See Exhibits "E" and "F"*).

105. To enable themselves to sell as many *Kevlar* shields to the military as it would buy, despite their inability to obtain sufficient *Kevlar* to manufacture the shields at the density required under their contracts with the DOD, the defendants knowingly and deliberately implemented a systematic “shorting” of the *Kevlar* in each set of shields, by weaving into *each set of shields for each and every helmet an average of eleven thousand one hundred two (11,102) less strands of Kevlar* than what the Department of Defense had deemed to be the “critical” minimum requirements in such manufacture.

106. The defendants implemented this “shorting” of materials by reducing the weave density of the *Kevlar* fabric, thereby reducing the armor protection afforded by each and every one of the nineteen (19) layers of *Kevlar* contained within each helmet.

107. The defendants deliberately implemented this systematic “shorting,” while knowing that the Department of Defense would have difficulty discovering the shorting due to the fact that the defendants: (a) would cover the *Kevlar* fabric with resin before shipping it to the Department of Defense’s receiving agency, thereby obscuring visual review of the composition of the fabric, and (b) added additional resin to increase the weight of the product to conceal the fact that the *Kevlar* fabric itself was “under weight.”

108. This systematic shorting of *Kevlar* was deliberate, systematic, and documented by the defendants themselves.

109. Under the contract/order which is annexed hereto as Exhibit “A” the Department of Defense ordered sets of *Kevlar* shields for four (4) helmet sizes which included: “Small” (item number 00001 FAB 5007), “Medium” (item number 00002 FAB 5008), “Large” (item number 00003 FAB 5009) and “Extra Large” (item number 00004 FAB 5010).

110. To reduce the amount of *Kevlar* employed in its manufacture of such shields ordered by the DOD, from the date of initial order through April 2006, the defendants deliberately set, and proceeded to operate, their weaving looms to weave its *Kevlar* cloth at a reduced density at, or below, 33.2 *fill* strands by 34 *warp* strands per square inch of fabric (33.2 x 34), which in turn, “shorted” each Small helmet 9,526 strands of *Kevlar*, shorted each Medium helmet by 9,856 strands of *Kevlar*, shorted each Large helmet by 10,547 strands of *Kevlar*, and shorted each Extra Large helmet by 12,843 strands of *Kevlar*.

111. At times during which the defendants were producing the *Kevlar* shields which they sold to the DOD, the defendants weaving looms had been further “adjusted” to weave fabric at densities as low as 32 x 34 (*See e.g.*, an SMC Quality Assurance Inspection report dated 10/3/05 which reflects that five rolls of *Kevlar*, roles 569, 570, 617, 619 and 1113 were woven to a thread count of 34 x 34, while roll 1114 was woven to a thread count of 32 x 34, annexed hereto as Exhibit “P”).

112. To the extent that the defendants sold *Kevlar* shields to the DOD at these further reduced densities, the defendants deliberately “shorted” each Small helmet by as many as 19,072 strands of *Kevlar per helmet*, shorted each Medium helmet by as many as 19,732 strands of *Kevlar per helmet*, shorted each Large helmet by as many as 21,093 strands of *Kevlar per helmet*, and shorted each Extra Large helmet by as many as 25,686 strands of *Kevlar per helmet*.

113. Upon information and belief, from SMC’s receipt of its first order from the DOD, through April 2006, the defendants had never set SMC’s weaving looms to produce *Kevlar* cloth which met the minimum density specifications set forth in MIL-C-44050A, nor which complied with SMC’s contractual obligations to the DOD.

114. In manufacturing the *Kevlar* shields which it sold to the DOD, SMC employed four (4) *Sulzer* brand weaving looms, respectively numbered 1 through 4, and three (3) *Dornier* brand weaving looms upon which they wove the cloth out of which the shields were cut. (See Exhibit “GG” annexed hereto, which is a true copy of a page from an internet website maintained by defendant SMC).

The *Sulzer* Looms

115. At all times during which they manufactured such *Kevlar* cloth for the DOD, the defendants set and maintained SMC’s (4) *Sulzer* looms to weave such *Kevlar* fabric at a density at or below, 32.5 x 34 threads per square inch.

116. *Sulzer* looms enable operators to physically “set” the looms to weave fabric at any specific *fill* thread density, through the physical installation of a set of four (4) control “wheels,” which are respectively identified as wheels “A,” “B,” “C” and “D.”

117. To set the loom to weave fabric at any given *fill* thread density, requires the physical installation of the proper set of control wheels (A-D) with each size wheel specifically identified by a number, as specified in a chart provided by the manufacturer (See a true copy of *Sulzer*’s loom density/wheel specification chart annexed hereto as Exhibit “L”).

118. From the time of the initial order which SMC received from the DOD until April, 27, 2006, the defendants had deliberately caused to be installed and maintained, within all four of SMC’s *Sulzer* looms, a control wheel configuration for wheels A through D, of 42 38 52 34.

119. As reflected on Exhibit “L,” by deliberately installing this control wheel configuration, the defendants set all four (4) of SMC’s *Sulzer* looms to weave the Kevlar fabric they were producing at a *fill* weave density of 32.5 threads per inch (See Exhibit “L” under the left-hand column entitled “Thread density 1 inch,” the wheel configuration listed alongside thread count 32.5).

120. *Warp* density is controlled by the installation of reeds which hold the fabric threads in slots known as “dents,” with two (2) threads of fabric being held within each dent.

121. Upon information and belief, when originally placed in operation, SMC’s *Sulzer* looms employed reeds which had 17.25 dents per inch.

122. More than ten years ago, for the explicitly stated purpose of “saving money,” the defendants replaced them with reeds which possessed 17 dents per inch, which, at two (2) threads per dent, hold 34 threads.

123. By setting their *Sulzer* looms at this control wheel configuration and installing these reeds, the defendants physically set-up all four of SMC’s *Sulzer* weaving looms to weave all MIL-C-44050A *Kevlar* fabric at a weave composition of 32.5 x 34 threads per inch.

The Dornier Looms

124. In addition to the *Sulzer* looms, SMC employed three (3) *Dornier* brand looms with which to weave the *Kevlar* fabric it was to provide to the U.S. military under its contracts with the DOD.

125. Similar to the *Sulzer* looms, the *warp* density at which fabric is woven upon a Dornier loom is controlled by the use of reeds.

126. On the *Dornier* looms, each dent or slot within each reed is set to hold four (4) threads which are to be woven into the fabric being produced.

127. At all times during which SMC was producing the *Kevlar* cloth which it sold to the DOD, the defendants installed and maintained upon all three *Dornier* looms, reeds which contained 8.3 dents per inch, with each dent holding four (4) threads of *Kevlar* (Annexed hereto as Exhibit "M" are two purchase orders evidencing SMC's purchases of 8.3 dent-per-inch loom reeds as late as June 17, 2005).

128. In doing so, the defendants deliberately set-up all three *Dornier* looms to weave the MIL-C-44050A *Kevlar* fabric which was to be sold to the DOD at a weave composition of 33.2 x 34 threads per inch.

**Shortage Calculations for Helmet Armor
Manufactured by the defendants**

(a) Shortage Calculations for "*Small*" Helmets
Contract Item # 0001 FAB5007

129. Under contracts including, but not necessarily limited to, contract # 4600001304, the defendants contracted to manufacture and provide to the U.S. DOD, *Kevlar* shields for "Small" helmets, as contract item # 0001 FAB5007 (See Exhibit "A" at page 2).

130. As specifically required under the contract(s), Small helmets were to contain, and the defendants were contractually obligated to provide, nineteen (19) layers of *Kevlar* aramid cloth which specifically included: (1) one outer circle 19½ inches in diameter, one inner circle 19 inches in diameter (3) three crown plates 7⅛ inches in diameter, and (14) fourteen rectangular panels 30⅝ x 7¼ inches (See Exhibit "A" page 2).

131. Immediately below the description of these layers, the contract explicitly provided that these layers were to be manufactured “according to . . . MIL-H-44099A and MIL-C-44050A,” which mandated that the aramid cloth be woven to a density not below the minimum thread counts of 35 *warp* threads per inch, and 35 *fill* threads per inch, and explicitly classified these minimum requirements as “critical” in the manufacture of such cloth (See Exhibit “A” at pages 2 and 7, Exhibit “C” at page 4, and Exhibit “B” at page 13).

132. From the date the first order was received from the U.S. DOD under contracts including, but not necessarily limited, contract # 4600001304, through April of 2006, the defendants physically set all of their mechanical weaving looms to weave the *Kevlar* fabric they were manufacturing at densities of 32.5 *fill* threads per inch x 34 *warp* threads per inch (on the four *Sulzer* looms), and 33.2 *fill* threads per inch x 34 *warp* threads per inch (on the three *Dornier* looms), each of which being a weave density at least two and one half threads per square inch lower than the explicitly stated “critical” minimum weave density set forth in the contracts.

133. By deliberately and systematically setting SMC’s looms to produce fabric at these reduced density compositions, the defendants deliberately shorted the *Kevlar* contained in each and every “Small” helmet a total of approximately nine thousand five hundred and twenty six (9,526) strands of *Kevlar per helmet*.

134. The total area of the 19 layers of *Kevlar* cloth produced for each small helmet, as calculated by applying the formula $\text{Area} = \pi r^2$ to calculate the area for the circular layers, and $\text{Area} = L \times W$ for the rectangular areas, and the actual number of *Kevlar* fibers which the defendants deliberately shorted from each helmet, are calculated as follows:

<u>Layer</u>		<u>Area (π r²)</u>
one outer circle at 19½ inches in diameter	=	298.65 sq in
one inner circle at 19 inches in diameter,	=	283.53 sq in
one crown plate at 7⅞ inches in diameter, 39.87		
39.87 x 3 plates	=	119.61 sq in
		<u>Area (L x W)</u>
one rectangular panel 30⅝ x 7¼, x 14, 222.03		
222.03 x 14 panels	=	3,108.44 sq in
<u>Total Area</u>	=	3,810.23 sq in
<i>Total number of Kevlar strands shorted from each "Small" helmet, Item 00001 FAB 5007 (A x 2.5)</i>	=	9,526

(b) Shortage Calculations for "Medium" Helmets
Contract Item # 0002 FAB 5008

135. Under contracts including, but not necessarily limited to, contract # 4600001304, the defendants contracted to manufacture and provide to the U.S. DOD, *Kevlar* shields for "Medium" helmets, as contract item # 0002 FAB5008 (*See Exhibit "A" at page 3*).

136. As specifically required under the contract, Medium helmets were to contain, and the defendants were contractually obligated to provide, nineteen (19) layers of *Kevlar* aramid cloth which specifically included: (1) one outer circle 20 inches in diameter, (1) one inner circle 19.5 inches in diameter (3) three crown plates 7⅞ inches in diameter, and (14) fourteen rectangular panels 31⅝ x 7¼ inches (*See Exhibit "A" page 3*).

137. Immediately below the description of these layers, the contract explicitly provided that these layers were to be manufactured “according to MIL-H-44099A and MIL-C-44050A,” which mandated that the aramid cloth be woven to a density not below the minimum thread counts of 35 *warp* threads per inch, and 35 *fill* threads per inch, and explicitly classified these minimum requirements as “critical” in the manufacture of such cloth (See Exhibit “A” at pages 3 and 7, Exhibit “C” at page 4, and Exhibit “B” at page 13).

138. By deliberately and systematically reducing the weaving densities to 32.5 and 33.2 *fill* threads per square inch, by 34 *warp* threads per square inch, in direct violation of the express terms of the contract(s), the defendants shorted the *Kevlar* contained in each and every “Medium” helmet a total of approximately nine thousand eight hundred fifty six (9,856) strands of *Kevlar per helmet*.

139. The total area of these 19 layers of *Kevlar* cloth, as calculated by applying the formula $\text{Area} = \pi r^2$ to calculate the area for the circular layers, and $\text{Area} = L \times W$ for the rectangular areas, and the actual number of *Kevlar* fibers which the defendants deliberately shorted from each helmet, are calculated as follows:

<u>Layer</u>	<u>Area (πr^2)</u>
one outer circle at 20 inches in diameter	= 314.16 sq in
one inner circle at 19.5 inches in diameter,	= 298.65 sq in
one crown plate at 7 1/8 inches in diameter, 39.87	
39.87 x 3 plates	= 119.61 sq in
	<u>Area (L x W)</u>
one rectangular panel 31 5/8 x 7 1/4, x 14, 229.28	
229.28 x 14 panels	= 3,209.94 sq in
<u>Total Area</u>	= 3,942.36 sq in

*Total number of Kevlar strands shorted from
each "Medium" helmet, Item 00002 FAB 5008 (A x 2.5) = 9,856*

(c) Shortage Calculations for "Large" Helmets
Contract Item # 0003 FAB5009

140. Under contracts including, but not necessarily limited to, contract # 4600001304, the defendants contracted to manufacture and provide to the U.S. DOD, *Kevlar* shields for "Large" helmets, as contract item # 0003 FAB5009 (*See Exhibit "A" at page 3*).

141. As specifically required under the contract, Large helmets were to contain, and the defendants were contractually obligated to provide, nineteen (19) layers of *Kevlar* aramid cloth which specifically included: (1) one outer circle 21 inches in diameter, (1) one inner circle 20 inches in diameter (3) three crown plates 7½ inches in diameter, and (14) fourteen rectangular panels 32⅝ x 7½ inches (*See Exhibit "A" page 3*).

142. Immediately below the description of these layers, the contract explicitly provided that these layers were to be manufactured "according to . . . MIL-H-44099A and MIL-C-44050A," which mandated that the aramid cloth be woven to a density not below the **minimum** thread counts of 35 *warp* threads per inch, and 35 *fill* threads per inch, and explicitly classified these minimum requirements as "**critical**" in the manufacture of such cloth (*See Exhibit "A" at pages 3 and 7, Exhibit "C" at page 4, and Exhibit "B" at page 13*).

143. By deliberately and systematically reducing the weaving densities to 32.5 and 33.2 *fill* threads per square inch, by 34 *warp* threads per square inch, in direct violation of the express terms of the contract(s), the defendants shorted the *Kevlar* contained in each and every “Large” helmet a total of approximately ten thousand five hundred forty seven (10,547) strands of *Kevlar per helmet*.

144. The total area of these 19 layers of *Kevlar* cloth, as calculated by applying the formula $\text{Area} = \pi r^2$ to calculate the area for the circular layers, and $\text{Area} = L \times W$ for the rectangular areas, and the actual number of *Kevlar* fibers which the defendants deliberately shorted from each helmet, are calculated as follows:

<u>Layer</u>		<u>Area (πr^2)</u>
one outer circle at 21 inches in diameter	=	346.36 sq in
one inner circle at 20 inches in diameter,	=	314.16 sq in
one crown plate at 7½ inches in diameter, 44.18		
44.18 x 3 plates	=	132.54 sq in
		<u>Area (L x W)</u>
one rectangular panel 32⅝ x 7½, x 14, 244.69		
244.69 x 14 panels	=	3,425.63 sq in
<u>Total Area</u>	=	4,218.69 sq in
<i>Total number of Kevlar strands shorted from each “Large” helmet, Item 00003 FAB 5009 (A x 2.5)</i>	=	10,547

(d) Shortage Calculations for “*Extra Large*” Helmets
Contract Item # 0004 FAB5010

145. Under contracts including, but not necessarily limited to, contract # 4600001304, the defendants contracted to manufacture and provide to the U.S. DOD, *Kevlar* shields for “*Extra Large*” helmets, as contract item # 0004 FAB5010 (*See Exhibit “A” at page 4*).

146. As specifically required under the contract, *Extra Large* helmets were to contain, and the defendants were contractually obligated to provide, nineteen (19) layers of *Kevlar* aramid cloth which specifically included: (1) one outer circle 21½ inches in diameter, (1) one crown plate 8½ inches in diameter, (16) sixteen rectangular panels 35¼ x 7¾ inches, and (1) one inner circle 21 inches in diameter (*See Exhibit “A” page 4*).

147. Immediately below the description of these layers, the contract explicitly provided that these layers were to be manufactured “according to . . . MIL-H-44099A and MIL-C-44050A,” which mandated that the aramid cloth be woven to a density not below the **minimum** thread counts of 35 *warp* threads per inch, and 35 *fill* threads per inch, and explicitly classified these minimum requirements as “**critical**” in the manufacture of such cloth (*See Exhibit “A” at pages 4 and 7, Exhibit “C” at page 4, and Exhibit “B” at page 13*).

148. By deliberately and systematically reducing the weaving densities to 32.5 and 33.2 *fill* threads per square inch, by 34 *warp* threads per square inch, in direct violation of the express terms of the contract(s), the defendants shorted the *Kevlar* contained in each and every “*Extra Large*” helmet a total of approximately twelve thousand eight hundred forty three (12,843) strands of *Kevlar per helmet*.

149. The total area of these 19 layers of *Kevlar* cloth, as calculated by applying the formula $\text{Area} = \pi r^2$ to calculate the area for the circular layers, and $\text{Area} = L \times W$ for the rectangular areas, and the actual number of *Kevlar* fibers which the defendants deliberately shorted from each helmet, are calculated as follows:

<u>Layer</u>		<u>Area (πr^2)</u>
one outer circle at 21½ inches in diameter	=	363.05 sq in
one crown plate at 8½ inches in diameter	=	56.75 sq in
		<u>Area (L x W)</u>
one rectangular panel 35¼ x 7¾, 273.19		
273.19 x 16 panels	=	4,371.04 sq in
		<u>Area (πr^2)</u>
one inner circle at 21 inches in diameter,	=	346.36 sq in
<u>Total Area</u>	=	5,137.2 sq in
<i>Total number of Kevlar strands shorted from each "Extra Large" helmet, Item 00004 FAB 5010 (A x 2.5) =</i>		12,843

G. The Defendants' Creation of False Records and Presentation of False Claims to The United States Government

150. At all times described herein, the defendant Tribe, through all six (6) of its sitting Council Members controlled the day-to-day operations of defendant SMC, together with defendant Carl R. McKay, who is the President and CEO of SMC.

151. At all times described herein, defendants Carl R. McKay and Hyllis Dauphinais, managed and oversaw SMC's production and day-to-day business operations.

152. As reflected within SMC's self-described history (Exhibit "K"), SMC and those who controlled it were intimately familiar with the U.S. Army's decision to commence employing *Kevlar* cloth as armor within U.S. Military helmets, as well as the military specifications which the DOD had adopted to ensure that such armor afforded sufficient protection for the U.S. Soldiers for whom it was intended to protect.

153. More specifically, as reflected within Exhibit "K" at page "13," the defendants were aware of military specification MIL-C-44050, as far back as 1984.

154. Notwithstanding that knowledge, faced with the "business opportunity" presented by the wars in Iraq and Afghanistan (See Exhibit "E"), and a simultaneous shortage in the availability of *Kevlar* (See Exhibits "E" and "F"), the defendants deliberately implemented a scheme to produce and thereafter sell to the DOD *Kevlar* shields which contained less than the minimum density of *Kevlar* shielding which had been deemed critical by the DOD, for the specific purpose of fraudulently inducing the U.S. to pay SMC monies in amounts which would ultimately grow to equal or exceed one hundred fifty million (\$150,000,000.00) dollars.

155. To implement such scheme, the defendants deliberately caused all of the weaving looms contained within SMC's 250,000 square foot manufacturing facility to be set to weave *Kevlar* fabric at a thread count *below* the minimum thread count which was not only required, but was affirmatively deemed to be "*critical*" under Defendant SMC's contracts with the DOD.

156. The defendants implemented this systematic "shorting" of *Kevlar*, knowing that the DOD would have difficulty becoming aware of the shortage of *Kevlar* contained within the *Kevlar* shields, due to the fact that: (a) the defendants would, and did, cover all such cloth with resin which obscured the surface of the cloth before causing it to be shipped to the DOD's receiving agency, and (b) the defendants added additional resin which concealed fact that the cloth itself was underweight.

157. By implementing this systematic "shorting" of *Kevlar* in its shields, the defendants were able to manufacture and sell to the U.S. Military a greater number of *Kevlar* shields, while concomitantly realizing a savings equaling or exceeding one million two hundred thousand (\$1,200,000.00) dollars in raw materials costs.

158. In carrying out this scheme, the defendants caused SMC to ship as many as two million (2,000,000) sets of such inherently defective *Kevlar* shields to the DOD's receiving agency, and submitted invoices seeking payment for such uniformly defective goods, while affirmatively knowing that the goods were defective.

(a) The Defendants' False Inspection Practices

159. Under the explicit terms of its contracts with the DOD, SMC was affirmatively required to: (a) weave all fabric to be employed for military helmets at a “critical” minimum weave density not less than 35 x 35, threads per inch, (b) to inspect the fabric it was manufacturing, on a regular basis, to ensure that it met such minimum required thread counts, (c) to reject within its own manufacturing process any fabric that did not meet the minimum specified weave composition, and (d) to submit a certification to the DOD with each shipment, certifying that each shipment of the product being supplied met the contract specifications.

160. Inspections of the *Kevlar* cloth being produced by SMC for use in military helmets were conducted by SMC's QA (Quality Assurance) Department, through its staff which examined rolls of the cloth to purportedly count the actual thread count of each role which had been woven, and to complete a hand-written “QA Weaving Inspection Log” for each such inspection.

161. As described within paragraphs “107” through “125” herein above, however, the defendants deliberately set all of the looms with which SMC was weaving the fabric to be sold to the DOD, to produce such fabric at the specific densities of 33.4 x 34 (on the *Sulzer* looms), and 33.2 x 34 (on the *Dornier* looms).

162. Being well aware of the fact that *genuine* inspections of the *Kevlar* cloth they were causing SMC's looms to produce would invariably reflect that such cloth was below the critical minimum weave composition which was specified under their contracts with the DOD, the defendants directed their inspectors to falsify their inspection reports by “rounding up” thread counts.

163. Alternatively stated, by order of the defendants, thread counts as low as 34.1 pics (threads) per inch were “rounded up” to 35, and thread counts as low as 33.1 pics (threads) per inch were “rounded up” to 34.

164. This directive was set forth in SMC Procedure form “LP-022” a true copy of which is annexed hereto as Exhibit “HH.”

165. As reflected within Exhibit “HH, form LP-022 specifies that it concerns Military Specification MIL-C-44050, falsely states that the requirements of such specification call for warp thread counts of 35 plus or minus one thread, per inch, and fill thread counts of 35 plus or minus one thread per inch, and affirmatively directs, under “procedure” number “3,” that if a fraction of a yarn falls within the one inch count, the inspection was to “count it as a whole yarn.”

166. More important than the *written* instruction to round-up” thread counts, were affirmative *oral* instructions which were given to SMC’s inspectors, wherein they were directed that if they tested a roll of *Kevlar*, and found that the thread count was too low, they were to repeat the test as many times as necessary, on other portions of the role until they found “*a hint of 35*” and upon finding such “*a hint of 35*,” they were to report a thread count of 35 on their inspection report.

167. But despite these practices, and even when thread counts were “rounded-up” SMC’s own inspection records confirm that, as was well known to the defendants, the cloth which was being woven and sold to the DOD was woven at thread counts below the critical minimum thread count specifically provided in the contracts between SMC and the DOD.

168. A sampling of SMC QA inspection reports, which is annexed hereto as Exhibit “DD” clearly reflects that, even when “rounded-up” the thread counts were below the 35 x 35 critical minimum thread counts.

169. Annexed hereto as Exhibit “DD” is a sampling of copies of SMC QA inspection reports, for a one year period, which reflected thread counts of 34 x 34 (after being rounded up), which are respectively dated as follows: 3/21/06, 3/13/06, 3/8/06, 3/7/06, 3/3/06, 3/2/06, 3/1/06, 3/1/06, 2/28/06, 2/16/06, 2/15/06, 2/14/06, 2/13/06, 2/13/06, 2/10/06, 2/9/06, 2/9/06, 2/7/06, 2/6/06, 2/6/06, 2/1/06, 1/27/06, 1/26/06, 1/24/06, 1/20/06, 1/19/06, 1/16/06, 1/12/06, 1/6/06, ½/06, 12/22/05, 12/20/05, 12/16/05, 12/15/05, 12/14/05, 12/13/05, 12/12/05, 12/8/05, 12/7/05, 12/6/05, 11/28/05, 11/28/05, 11/22/05, 11/22/05, 11/16/05, 11/14/05, 11/8/05, 11/8/05, 11/3/05, 10/28/05, 10/20/05, 10/19/05, 10/19/05, 10/17/05, 10/13/05, 10/12/05, 10/11/05, [undated], 10/9/05, 10/07/05, 10/4/05, 9/30/05, 9/19/05 9/14/05, 9/12/05, 9/5/05, 8/31/05, 8/29/05, 8/24/05, 8/22/05, 8/18/05, 8/15/05, 8/9/05, 7/28/05, 7/26/05, 7/22/05, 7/20/05, 6/20/05, 6/16/05, 6/10/05, 5/25/05, 5/18/05, 5/17/05, 5/13/05, 5/3/05, 4/29/05, 4/27/05, 4/25/05, 4/21/05 and 4/4/05.

170. In other QA inspection reports, when rounding up, inspectors would record thread counts of 34 x 35 and sometimes 35 x 35, despite the fact that the actual thread count was at or below 34 x 34 threads per inch.

171. Annexed hereto as Exhibit “EE” is a one-year sampling of QA Inspection reports which reflect counts, inclusive of those which were rounded-up, of 34 x 35, which are respectively dated: 4/19/06, 4/3/06, 3/30/06, 3/29/06, 3/28/06, 3/27/06, 3/24/06, 3/24/06, 3/23/06, 3/22/06, 3/16/06, 3/14/06, 3/10/06, 3/9/06, 3/8/06, 3/7/06, 3/7/06, 3/6/06, 3/6/06, 3/2/06, 3/1/06, 2/28/06, 2/27/06, 2/24/06, 2/23/06, 2/22/06, 2/22/06, 2/21/06, 2/21/06, 2/17/06, 2/17/06,

2/16/06, 2/15/06, 2/14/06, 2/14/06, 2/2/06, 1/31/06, 1/10/06, 1/6/06, 1/4/06, 12/22/05, 12/19/05, 12/12/05, 12/8/05, 12/2/05, 12/2/05, 11/18/05, 11/1/05, 10/26/05, 10/24/05, 10/16/05, 10/14/05, 10/8/05, 10/3/05, 9/21/05, 8/11/05, 8/5/05, 8/3/05, 7/18/05, 7/12/05, 6/27/05, 6/22/05, 6/14/05, 6/8/05, 6/6/05, 6/2/05, 5/31/05, 5/23/05, 5/11/05, 5/9/05, 5/5/05, 4/19/05, 4/14/05, 4/12/05, 4/8/05, 4/6/05, 3/30/05, 3/29/05, 3/28/05, 3/22/05, 3/21/05, 3/18/05, 3/16/05, 3/14/05, 3/9/05, 3/8/05, 3/17/05, 2/28/05, 2/25/05, 2/24/05, 2/22/05, 2/15/05, 2/9/05, 2/8/05, 1/19/05 and 1/5/05.

(b) **The Presentation of False Statements
and False and/or Fraudulent Claims**

172. Notwithstanding the fact that, as reflected within the defendants' own inspection records (Exhibits "DD" and "EE"), the *Kevlar* shields which the defendants were selling to the DOD did not meet the minimum critical requirements under SMC's contracts, the defendants knowingly and deliberately shipped, and caused to be shipped, the inherently defective shields to the DOD, while knowing that they were to be used as armor for the protection of U.S. Soldiers.

173. Each and every shipment of such defective goods was accompanied by both a packlist/invoice and a false product certification.

174. Each and every packlist, a copy of one of which is annexed hereto as Exhibit "N," provided a description of the goods being shipped by explicit reference to the contract under which the goods were being shipped, and/or the item number on such contract (*See* Exhibit "N" which provides "REFERENCE CONTRACT 4600001304 and "FAB5009").

175. Each and every packlist was accompanied by a product certification, which had been prepared and certified by SMC's QA Department, wherein they certified that all of the goods in the respective shipment had been inspected and were in compliance with military specifications MIL-C-44050A and MIL-H-44099A, and the terms of SMC's contract.

(c) False Packlist/Invoices

176. To solicit payment from the U.S. Government, along with each shipment of the inherently defective *Kevlar* shields produced by SMC, the defendants presented, or caused to be presented to the U.S. Government, false packlists/invoices seeking payment for, and/or approval of, the claims represented by each such invoice, from the U.S. Government (Annexed hereto as Exhibit "N" is a copy of one such packlist invoice, dated 4/29/05, which SMC presented to the U.S. Government as further described below).

177. As presented to the U.S. Government, each and every such packlist/invoice represented both: (a) a false or fraudulent claim which the defendants knowingly submitted for payment or approval by the U.S. Government (*See* 31 U.S.C. §3729(a)(1)), and (b) a false record or statement which the defendants knowingly made, used and caused to be made and used, to get the false and fraudulent claims presented by each such invoice paid (*See* 31 U.S.C. §3729(a)(2)).

178. As presented to the U.S. Government as an invoice, and/or bill which affirmatively stated that the "PAYMENT TERMS" were "Net 30 [days]," each such invoice within which the defendants billed the U.S. Government seeking payment for goods, which the defendants affirmatively knew to be defective and not in compliance with the requirements of their contract with the DOD, constituted a false and/or fraudulent claim for payment or approval, within the purview of 31 U.S.C. §3729(a)(1).

179. Simultaneously, as prepared by the defendants, each and every such invoice constituted a false record and/or statement.

180. As reflected within Exhibit "N," in presenting these packlist/invoices to the U.S. Government, the defendants identified the goods it shipped by part ID# "FAB5009," and directed the recipient to "REFERENCE CONTRACT 4600001304" for the detailed description of the parts shipped (*See* Exhibit "N").

181. Contract/Order "460001304" is annexed hereto as Exhibit "A" (See Exhibit "A," at the top of page one, upper left-hand corner).

182. The description within Contract 4600001304 to which Exhibit "N" directs a recipient to review for a description of the parts shipped under packlist "N," is set forth on both page 7 and page 3 of Exhibit "A."

183. On page 7, and again on page 3, Contract 4600001304 describes part number FAB5009, and affirmatively details that such part consists of "aramid-ballistic pattern sets" (of Kevlar shields) "All according toMIL-C-44050A," which, as detailed above, describes aramid fabric woven to a minimum weave composition of 35 warp threads per inch, x 35 fill threads per inch (*See* Exhibit B, page 4, under Requirements for Type II fabric).

184. By including within each packlist, a description, by "PART ID" which indicated that the items being shipped were in compliance with MIL-C-44050A, the defendants caused each and every such packlist to be created as a false record or statement which the defendants used, or caused to be used to get their false and fraudulent claims paid or approved by the U.S. Government, within the purview of 31 U.S.C. §3729(a)(2).

185. While the invoice annexed hereto as Exhibit "N" was a packlist/invoice submitted to the U.S. Government for contract # 4600001304, the defendants sent similar "packing lists" and/or invoices for shipments under other contracts, such as contract 4600001010 (Annexed collectively hereto as Exhibit "II" are a packing list and invoice respectively dated 6/27/03 and 10/24/03 which the defendants submitted to the U.S. Government seeking payment for goods shipped under contract number 460001010).

(d) False Certifications

186. Together with each and every such packlist and shipment, the defendants simultaneously presented a false written certification to the U.S. Government.

187. More specifically, the defendants caused each and every shipment to be accompanied by a written certification, which had been prepared and certified by an employee within SMC's QA Department, wherein such employee certified that all of the goods within each respective shipment had been inspected, and were in compliance with both military specifications MIL-H-44099A and MIL-C-44050A (Exhibits "B" and "C"), and the terms of the specific contract under which the goods had been shipped.

188. With regard to the packlist invoices annexed hereto as Exhibit "II" which are respectively dated 6/27/03 and 10/24/03, each of those invoices was submitted to the U.S. Government together with such a written certification entitled "CERTIFICATE OF CONFORMANCE" (See true copies of such written and fully executed Certificates of Conformance, respectively dated 6/27/03 and 10/24/03, annexed hereto as Exhibit "JJ").

189. As set forth within each Certificate of Conformance, the defendants (falsely) certified as follows:

“This is to certify that the following described material supplied to Contract 4600001010 MOD1 has been manufactured in accordance with, and meets the requirements of the specifications listed below and incorporated in your Purchase Order and attachments”

“WE CERTIFY ALL MATERIALS SHIPPED ON THIS ORDER MEET THE REQUIREMENTS OF I/A/W MIL-C-44099A and MIL-C-44050A”

(See Exhibit “JJ”).

190. As reflected herein, contrary to such false certifications, none of the two million (2,000,000) sets of *Kevlar* shields which the defendants shipped to the U.S. Government met the requirements of MIL-C-44099A and MIL-C-44050A, and as such, each and every such written certification represented a false record or statement which the defendants submitted to get a false or fraudulent claim paid by the U.S. Government, within the purview of 31 U.S.C. §3729(2), as well as a false or fraudulent claim under 31 U.S.C. §3729(1).

191. The presentation of such fraudulent packlist/invoices and false certifications precipitated payment being tendered from the U.S. Government, *which would not have made such payments in the absence of its receipt of such false certifications*, to SMC in amounts which cumulatively equaled or exceeded one hundred fifty million (\$150,000,000.00) dollars.

(e) Presentation to The U.S. Government

192. The defendants caused those defective goods, false certifications and fraudulent packlist/invoices to be shipped to a receiving agency of the U.S. Government, UNICOR, which is also known as “Federal Prison Industries” (See the listed recipient on the packlist/invoice annexed hereto as Exhibit “N”).

193. UNICOR is a Corporation which is wholly owned by the United States Government (Annexed hereto as Exhibit “O” is a copy of an internet webpage maintained by UNICOR which discloses its identity as a Corporation owned by, and an agency of, the United States Government).

194. Under the direction of the defendants, plaintiff Tamra Elshaug, prepared and sent to UNICOR the packlists, including those annexed hereto as Exhibits “N” and “II,” which accompanied each and every shipment of the *Kevlar* shields described herein.

195. At the peak of SMC’s production of such shields, Ms. Elshaug prepared and sent such packlists from SMC to UNICOR at the rate of one (1) per week, while at other times, such packlists were provided on a biweekly basis, and at other times, once per month. Each and every packlist sent by Ms. Elshaug was accompanied by a fully executed Certificate of Conformance in the same form as those collectively annexed hereto as Exhibit “JJ.”

196. For the reasons stated herein, each and every such written certification that all of the *Kevlar* shields within each respective shipment were in compliance with both military specifications MIL-H-44099A and MIL-C-44050A (Exhibit “B” and “C”), and the terms of the specific contract under which the goods had been shipped, were false, and were known to be false by the defendants, at the time such certifications were presented to the U.S. Government.

197. Together with such packlists and false certifications, the defendants shipped, and caused to be shipped as many as two million (2,000,000) sets of the *Kevlar* shields described herein to UNICOR, as an authorized receiving agent for the U.S. Government.

H. The Conduct of The Defendants

198. Upon information and belief, each and every one of the defendants: (a) presented and/or caused to be presented false and fraudulent claims to the U.S. Government, (b) made and used, or caused to be made and used false records and statements to cause such false and fraudulent claims to be paid or allowed by the U.S. Government, and (c) conspired with the other defendants and/or third persons to get such false claims allowed or paid by the U.S. Government, within the meaning of 31 U.S.C. §3729.

199. Upon information and belief, each and every one of the defendants conspired to cause, and did cause, SMC to “short” the amount of *Kevlar* contained within each set of *Kevlar* shields being manufactured by the defendants for the DOD, for the purpose of enabling SMC to manufacture and sell to the U.S. Government a greater number of *Kevlar* shields than the market supply of *Kevlar* would permit, and for the additional purpose of causing SMC to realize a savings in the cost of raw materials expended in the manufacture of such shields, in amounts equaling or exceeding one million two hundred thousand (\$1,200,000.00) dollars.

200. Upon information and belief, each of the defendants further conspired to “short” the U.S. Government in the manufacturing of such *Kevlar* shields by deliberately setting, and thereafter maintaining SMC’s looms to weave all *Kevlar* fabric at densities below the critical minimum density set forth in SMC’s contracts with the U.S. Government.

201. Upon information and belief, each of the defendants further conspired to conceal this systematic shorting of material, by directing inspectors within SMC's QA Department to falsify quality inspections of such product by "rounding-up" weave counts, and repeating tests where low thread counts were found, until the inspectors could find "*a hint*" of the proper thread count.

202. Upon information and belief, each of the defendants further conspired to conceal their systematic shorting of material by causing the woven fabric to be covered with additional resin, to deliberately conceal the fact that the fabric was "underweight."

203. Upon information and belief, the Tribe, by all (6) members of the Tribe's Counsel who were simultaneously on the Board of Directors of SMC, SMC, Defendant Carl R. McKay and Defendant Hyllis Dauphinais affirmatively knew that the *Kevlar* being manufactured by SMC under their direct management and supervision, was being manufactured and thereafter delivered to the DOD at a density which was below the minimum composition required under both the applicable military specifications, and the terms of SMC's contracts with the DOD.

204. Upon information and belief, each and every one of the defendants caused the defective *Kevlar* shields to be packaged for the purpose of delivering them to the U.S. Government.

205. Upon information and belief, each and every one of the defendants caused the defective *Kevlar* shields to be shipped and/or delivered to the U.S. Government.

206. Upon information and belief, each and every one of the defendants knew that the defective *Kevlar* shields were shipped and/or were to be shipped to the U.S. Government for the purpose of inducing the U.S. Government to pay defendant SMC for the purchase of same.

207. Upon information and belief, each of the defendants presented or caused to be presented to the U.S. Government, the packlist/invoices seeking payment for the defective *Kevlar* shields as described herein, thereby presenting or causing to be presented, false and/or fraudulent claims for payment or approval, within the purview of 31 U.S.C. §3729(a).

208. Upon information and belief, each of the defendants made, used or caused to be made or used such packlist/invoices and the descriptions contained therein, and thereby made, used, or caused to be made or used a false record and statement for the purpose of having such false and/or fraudulent claims paid.

209. Upon information and belief, each of the defendants caused the creation of the false certifications which were submitted to the U.S. Government to induce approval and payment of the false and fraudulent claims, and thereby made, used and/or caused to be made or used false records and statements to induce payment of such false and fraudulent claims by the U.S. Government, within the purview of 31 U.S.C. §3729(2).

210. Upon information and belief, each of the defendants recognized that each respective invoice which they caused to be presented to the U.S. Government constituted a representation that defendant SMC had delivered goods which conformed to the requirements of SMC's contracts with the U.S. Government, and U.S. military specification MIL-C-44050A. (Exhibit "C").

211. Upon information and belief, each and every one of the defendants knew such information to be false.

212. Pleading in the alternative, to the extent that any of the defendants lacked actual knowledge of the falsity of the information provided to the U.S. Government, each such defendant acted in deliberate ignorance of the truth or falsity of the information and/or acted in reckless disregard of the truth or falsity of the information.

213. Upon information and belief, each of the defendants knowingly and deliberately failed to disclose to the U.S. Government the fact that the goods shipped and delivered to the U.S. Government were inherently defective and were not manufactured to meet the minimum specifications which had been required by the U.S. Government.

214. Upon information and belief, each and every one of the defendants conspired to defraud the U.S. Government by getting SMC's false and/or fraudulent invoices for such inherently defective *Kevlar* shields paid.

215. Upon information and belief, each and every one of the defendants conspired to "short" the amount of *Kevlar* contained within each set of *Kevlar* shields being manufactured by the defendants for the DOD, for the actual purpose of enabling the defendants to produce a greater number of such shields than the actual market supply of *Kevlar* would permit, at a time when the defendants knew that the U.S. Government's need for such shields would be driven by the wars pending in Iraq and Afghanistan.

216. That, by virtue of the defendants' conspiracy and their affirmative actions in furtherance of such conspiracy, and fraudulent actions and efforts, the defendants fraudulently induced the U.S. Government to tender sums equaling or exceeding one hundred fifty million (\$150,000,000.00) dollars for the inherently defective *Kevlar* shields which the defendants knowingly manufactured and delivered to the U.S. Government.

I. The Relators

(a) Plaintiff/Relator - Jeff Kenner

217. Plaintiff/Relator Jeff Kenner was hired as an employee of Defendant SMC in 1985, and he served as an exemplary employee of SMC for nearly twenty (20) years.

218. As reflected within SMC's own records, throughout that entire twenty year period, personal reviews of Jeff Kenner's performance as an employee of SMC consisted of glowing reports of exemplary performance and zero absenteeism.

219. SMC's employee reports of Mr. Kenner contain employee ratings ranging from "A" to "AA," and comments such as: "willing to put forth extra effort," "high producer," "increasing knowledge and skill," "accepts directions willingly," "cooperates with fellow workers," "enthusiastic," "keeps busy at work," "works without direction," "takes pride in work," "is an accurate worker," "quality conscious," "always on time," "is a safe worker," "follows supervisors instructions," "always at work station," "is a neat worker," "gets along well with people," "always cooperates with supervisor," "works well with others," "helps when asked," "does very well in all functions," and "very good attitude toward company."

(See, annexed hereto as Exhibit "Q," SMC personal employee reviews of Jeff Kenner dated, 7/15/85, 9/9/85, 3/17/86, 5/12/86, 5/13/95, 5/13/96, 5/6/97, 5/20/98, 6/17/99, 6/23/00, 7/16/01, 2/24/03, 2/26/03 and 11/16/04).

220. Mr. Kenner's performance and character were so exceptional, that they precipitated a letter of appreciation from SMC production manager, defendant Hyllis Dauphinais, on June 28, 2002, wherein Mr. Dauphinais praised Mr. Kenner as "an inspiration" to co-workers, and confirmed that the company had given Mr. Kenner more responsibility than others, "because we know the job will get done and that you will respond to the company's needs when called upon" (A true copy of such letter dated June 28, 2003 is annexed hereto as Exhibit "R").

221. Due to his exemplary performance, Mr. Kenner received numerous promotions through the years, until he was ultimately promoted to the position of Supervisor within SMC's weaving department.

222. On Monday July 21, 2003, by directive of defendant Carl R. McKay, Mr. Kenner was promoted to Supervisor of SMC's weaving department, and he was charged with the supervision of such department.

223. A true copy of a memorandum from defendant McKay wherein he directed same is annexed hereto as Exhibit "S."

224. In accord with defendant McKay's directive, Mr. Kenner was promoted from his previous title of "Materials Handling Clerk," to "Weaving Supervisor" (Annexed hereto as Exhibit "T" is a true copy of an SMC personal change notice reflecting Mr. Kenner's promotion).

225. During the period of 1985 through 2005, Mr. Kenner became intimately acquainted with defendant SMC's weaving operations, since he had operated defendant SMC's *Sulzer* and *Dornier* weaving looms, maintained them, repaired them, loaded and unloaded loom beams, tied in new loom beams, set up the machines to handle different cloth sizes, kept the

machines lubricated, repaired the machines as needed, rebuilt parts for the machines, and ultimately became Supervisor within the Weaving Department (*See* a true copy of an SMC job Questionnaire which Jeff Kenner was required to complete in 1996 which described his duties in the weaving department annexed hereto as Exhibit “U”).

226. In fulfilling those functions during that nineteen (19) year period, Mr. Kenner knew that, as had been directed by SMC’s management, each of the machines was weaving MIL-C-44050A cloth at a density *at or below* 34 *warp* threads by 34 *fill* threads per square inch, and that, at times, the defendants looms had been “adjusted” to weave the cloth at densities as low as 32 x 34 threads per inch.

227. It was not until September of 2004 that Mr. Kenner learned for the first time that this density was below the minimum weave density required under MIL-C-44050A.

228. Upon learning that the defendants were “shorting” the *Kevlar* fabric being woven, Mr. Kenner approached defendant Carl McKay, President and CEO of defendant SMC, to voice his objection to what he perceived as the defendants “cheating the U.S. Government.”

229. On September 15, 2004, Mr. Kenner asked defendant McKay directly why the employees of SMC were told to weave the *Kevlar* at 34 x 34, when the minimum requirements under the DOD’s contract were 35 x 35.

230. Defendant McKay’s response was “that is the way we are going to weave it” and “don’t you worry about it.”

231. After Mr. Kenner replied “I don’t think this is right,” defendant McKay responded, “I will be the judge of that.”

232. Defendant McKay then responded to Mr. Kenner's continuing objection, by demoting him from his position as Supervisor of SMC's Weaving Department, back to a position which Mr. Kenner previously held, with a concomitant reduction in salary.

233. By directive dated October 1, 2004, defendant McKay demoted Mr. Kenner back to "the materials department." Annexed hereto as Exhibit "V" is a true copy of such order from defendant McKay).

234. In accord with defendant McKay's directive, Mr. Kenner was demoted from his position as "Weaving Supervisor" back to "Materials Handling Clerk" (Annexed hereto as Exhibit "W" is a true copy of an SMC personnel change notice reflecting Mr. Kenner's "demotion").

235. As reflected within a memo of the same date as defendant McKay's memo demoting Mr. Kenner, defendant Hyllis Dauphinais sent a memo regarding the company's resultant need to find a replacement to fill the Supervisor position within the weaving department from which Mr. Kenner had been removed (A true copy of such memo dated October 1, 2004 is Annexed hereto as Exhibit "X").

236. Mr. Kenner presented further objections to Rhea Crane, who was, and is, manager of SMC's QA Department, which was responsible for testing the *Kevlar* and preparing certifications for presentation to the U.S. Government that it met the specifications which had been approved by the DOD.

237. In a chilling confirmation of the merits of Mr. Kenner's objections that SMC had produced, sold and delivered to the U.S. Military *Kevlar* shields which were woven at a density *below* the minimum density which had been deemed *critical* by the DOD, Ms. Crane stated to Mr. Kenner:

Ms. Crane: *"I've thought of this many times since I've realized that how much we've sent out under weight and under pics and I can't do anything about what's already happened . . . So forget it. But if we ever had someone get killed and they decided to investigate why, because they they thought maybe the helmet wasn't any good . . . and they pick that thing apart [silence] . . ."*

Mr. Kenner: *"oof"*

Ms. Crane *"oof is right. . . and it's the same thing with any of our panels too."*

[Excerpt of tape-recorded conversation of 4/27/06 between plaintiff Jeff Kenner and Rhea Crane, the SMC Quality Assurance Manager who signed the Certificate of Conformance dated June 27, 2003 which is annexed hereto as Exhibit "JJ," and whose name appears beneath the signature of the QA Inspector who signed the Certificate of Conformance dated October 24, 2003 which is also annexed hereto as Exhibit "JJ].

238. With regard to the falsity of the certifications which SMC sent to the DOD certifying that the materials being delivered to the DOD were in compliance with the requirements specified by the DOD, Ms. Crane affirmatively explained:

"We were lying."

[Excerpt of tape-recorded conversation of 4/27/06 between plaintiff Jeff Kenner and Rhea Crane].

239. Ms. Crane's comment regarding "*it's the same thing with any of our panels*" appears to be indicative that SMC has also shorted the *Kevlar* contained within armor panels which SMC has also manufactured and sold to the DOD causing them to be installed as armor in ten thousand (10,000) U.S. Military vehicles (*See* Exhibit "FF" annexed hereto).

(b) Plaintiff/Relator Tamra Elshaug

240. Plaintiff/Relator Tamra Elshaug, (formerly known as Tamra Schlieve), was hired as an employee of Defendant SMC in 1979, and she thereafter served as an employee of SMC for nearly twenty six (26) years.

241. As reflected within SMC's own records, throughout that entire twenty-six year period, personal reviews of Ms. Elshaug's performance as an employee of SMC consisted of glowing reports of exemplary performance (*See*, annexed hereto as Exhibit "Y," SMC personal employee reviews of Tamra Elshaug (f/k/a Tamra Schlieve) dated, 8/16/79, 3/10/80, 9/29/80, 2/24/81, 1/4/82, 4/26/82, 2/14/83, 2/20/84, 2/25/85, 3/10/86, 3/16/87, 4/4/88, 10/2/89, 5/31/94 and 11/14/01).

242. As a result of her exceptional performance commencing as an entry-level secretary, Ms. Elshaug received successive promotions to positions of ever-increasing responsibility, from Secretary, to Senior Secretary, to Executive Secretary, to Inventory Clerk, to Materials Specialist, to Materials Supervisor, and ultimately to Materials Purchasing Manager (Collectively annexed hereto as Exhibit "Z" are defendant SMC's personal change notices reflecting such promotions).

243. Similar to SMC's employee reviews of Mr. Kenner, SMC's employee reviews of Ms. Elshaug invariably consisted of highly laudatory praise for her work at SMC, highlighted within a description of Ms. Elshaug which was as follows:

“She has to be considered one of SMC's most valuable employees when one considers the considerable duties performed by her in her daily job activities. She not only performs her duties very well from the internal materials functions but is instrumental in much of the traffic activities inherent to SMC's operations . . . Tammy very regularly exceeds job requirements when she is called upon to perform problem solving functions in connection with purchasing and materials planning.”

(See a true copy of SMC's performance review of Ms. Elshaug dated October 1, 1991 annexed hereto as Exhibit “AA”).

244. As Materials Purchasing Manager for SMC, Ms. Elshaug was responsible for purchasing all of the *Kevlar* thread employed in SMC's manufacture of the *Kevlar* shields described herein.

245. Her duties also included sending the SMC “packlists” and product certifications described hereinabove, which accompanied each and every shipment of the *Kevlar* shields to the U.S. Government, each of which was shipped to the U.S. Government's receiving agent UNICOR (See the listed recipient on Exhibits “N” and “II,” and the identity of such recipient as reflected in Exhibit “O”).

246. Each such packlist, including the one annexed hereto as Exhibit "N," provided a description of the goods being shipped by explicit reference to the contract under which the goods were being shipped, and the item number on such contract (See Exhibit "N" which provides "REFERENCE CONTRACT 4600001304 and "FAB5009").

247. When sent to the government, each and every such packlist was accompanied by a product certification, which had been prepared and certified by SMC's QA Department, wherein they certified that all of the goods in the respective shipment had been inspected and were in compliance with military specifications MIL-C-44050A and MIL-H-44099A (See Exhibit "JJ").

248. In 2005, Ms. Elshaug became concerned that, at a time when SMC should have run out of *Kevlar* thread based upon SMC's sales to the DOD, SMC had instead amassed a *surplus* of twenty four to thirty thousand (24,000 - 30,000 lbs) pounds of *Kevlar* which she observed to be sitting in SMC's material storage area.

249. At a raw material purchase-price of fifteen dollars per pound, this translated into a monetary surplus of between \$360,000.00 and \$450,000.00 in excess raw materials which should have been expended in the manufacture of the *Kevlar* shielding which the defendants had sold to the Department of Defense.

250. Upon discussing the matter with Mr. Kenner, she learned that SMC had been weaving the *Kevlar* contained within the shields being sold to the DOD at a weave density below the critical minimum density specified under SMC's contract with the DOD, and concomitantly, all of the product certifications which she had sent to the DOD were false.

251. In discussing the existence and magnitude of the *surplus* of *Kevlar* which SMC had amassed, Ms. Elshaug and Mr. Kenner knew that *despite* Mr. Kenner's objections to defendant Carl McKay about "cheating the government" by weaving at the reduced density, and *after* Mr. McKay removed Mr. Kenner from his position as Supervisor in the weaving department in response to same, the defendants thereafter *continued* to deliberately weave the *Kevlar* cloth at a density well below the requirements of SMC's contracts with the DOD.

J. The Defendants Termination
of the Plaintiff/Relators

252. At a subsequent meeting with persons within SMC's QA Department, both Mr. Kenner and Ms. Elshaug voiced their objections to the defendants' systematic shorting of the *Kevlar* contained within the shields which SMC was selling to the DOD.

253. Once their objections had been voiced, SMC management began to treat the plaintiffs in an openly hostile manner, especially Ms. Elshaug who was thereafter verbally harassed on a continuous basis.

254. Under the circumstances, the plaintiffs proceeded to meet, after work, at a location off-of SMC's business premises, to discuss what action, if any, they could take to expose SMC's deliberate defrauding of the U.S. Government.

255. The defendants ultimately learned that the plaintiffs had met off-of SMC's premises, subsequent to the meeting at which the plaintiffs had voiced their objections to SMC's QA Department.

256. In response, the defendants caused the immediate termination of the plaintiffs under the pretext that the plaintiffs had violated Rules 40 and 45 of SMC's employee handbook (Annexed collectively hereto as Exhibit "BB" are two SMC personnel change notices dated 11/8/05 which indicate that both of the plaintiffs were terminated on 11/1/05, and further indicate, under item "6" entitled "explanation," that the purported reason for each of the plaintiffs terminations were for "Breaking plant rules 40 & 45 of the employee handbook").

257. Rules 40 and 45 of SMC's employee handbook provide as follows:

"PLANT RULE 40. No employee shall engage in immoral conduct or indecency."

"PLANT RULE 45. No employee shall engage in conduct off the Plant premises or during non-working hours which affects the employee's relationship to his/her job, his/her fellow employees, his/her supervisors, or the Corporation's products, property, reputation or goodwill in the community."

(Annexed hereto as Exhibit "CC" is a true copy of rules "40" and "45" from SMC's Employee Handbook)

258. Contrary to any false pretext otherwise, the plaintiffs had not engaged in any "immoral conduct or indecency" under "RULE 40."

259. As for the alleged violation of "RULE 45," the plaintiffs *did* engage in conduct which would "affect their relationship to their jobs" and "the Corporation's products, property and reputation," but only to the extent that they engaged in activity protected under 31 U.S.C. §3730(h), in that such conduct consisted of discussing how to take action to stop the defendants' deliberate and ongoing system of defrauding the U.S. Government.

260. The defendants terminated the plaintiffs in retaliation for their having raised objections to the defendants' fraudulent conduct, and in direct response to the plaintiffs having engaged in conduct protected under 31 U.S.C. §3730(h).

COUNT ONE
FALSE CLAIMS ACT - 31 U.S.C. §3729(a)(1) and (2)

261. The plaintiffs repeat, reiterate and incorporate by reference all of the allegations contained in paragraphs "1" through "260" hereinabove, as if fully set forth at length herein.

262. This is a claim for treble damages and forfeitures under the False Claims Act, 31 U.S.C. §3729 et seq., as amended.

263. The Plaintiff/Relators, Jeff Kenner and Tamra Elshaug have standing to maintain this action by virtue of 31 U.S.C. §3730(b) and (h).

264. By virtue of the acts described herein above, each of the defendants herein knowingly presented, or caused to be presented, false or fraudulent claims for payment or approval to the United States Government, and knowingly failed to disclose material facts, in order to induce the Government to make payment or approval of such false or fraudulent claims.

265. By virtue of the acts described above, each of the defendants knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the Government to pay or approve false and fraudulent claims.

266. By reason of these payments or approvals, the United States has been damaged, and continues to be damaged, in amounts equaling or exceeding one hundred fifty million (\$150,000,000.00) dollars.

267. By virtue of the foregoing, each and every one of the defendants are liable for such damages, and the other claims set forth herein, under 31 U.S.C. §3729.

COUNT TWO
FALSE CLAIMS ACT - 31 U.S.C. §3729(a)(3)

268. The plaintiffs repeat, reiterate and incorporate by reference all of the allegations contained in paragraphs "1" through "267" herein above, as if fully set forth at length herein.

269. This is a claim for treble damages and forfeitures under the False Claims Act, 31 U.S.C. §3729 *et seq.*, as amended.

270. By virtue of the acts described herein above, each of the defendants herein conspired with others to defraud the United States by inducing the Government to pay or approve false or fraudulent claims. Defendants, moreover, took substantial steps in furtherance of the conspiracy, *inter alia*, by making fraudulent representations, by preparing fraudulent records and by failing to disclose material facts.

271. As a result of such conspiracy, the United States was caused to pay, and has been damaged, and continues to be damaged, in amounts equaling or exceeding one hundred fifty million (\$150,000,000.00) dollars.

272. By virtue of the foregoing, each and every one of the defendants are liable for such damages, and the other claims set forth herein, under 31 U.S.C. §3729.

COUNT THREE
FALSE CLAIMS ACT - 31 U.S.C. §3730(h)

273. The plaintiffs repeat, reiterate and incorporate by reference all of the allegations contained in paragraphs "1" through "272" hereinabove, as if fully set forth at length herein.

274. This is a claim for damages under 31 U.S.C. §3730(h).

275. As set forth herein above, plaintiff Jeff Kenner was first demoted and thereafter terminated by the defendants, in direct retaliation for Mr. Kenner having engaged in conduct which is protected under 31 U.S.C. §3730(h).

276. As is also set forth herein above plaintiff Tamra Elshaug was first harassed and subsequently terminated by the defendants in direct retaliation for Ms. Elshaug having engaged in conduct which is protected under 31 U.S.C. §3730(h).

277. As a result of the foregoing, under 31 U.S.C. §3730(h) the plaintiffs are entitled to recover, and hereby seek to recover, damages including lost wages including double back pay, interest on any and all lost wages, and special damages including but not limited to litigation costs and reasonable attorneys fees.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment against the defendants, jointly and severally, as follows:

1. That the defendants cease and desist from violating 31 U.S.C. §3729 et seq.; and
2. That this Court enter judgment against the defendants, jointly and severally, in an amount equal to three times the amount of damages the United States has sustained because of the defendants' actions, plus a civil penalty of not less than \$5,500 and not more than \$11,000 for each violation of 31 U.S.C. §3729; and
3. That the plaintiffs be awarded the maximum amount allowed pursuant to 31 U.S.C. §3730(d) of the False Claims Act; and
4. That the plaintiffs be awarded damages for lost pay, together with interest and special damages, and
5. That the plaintiffs be awarded all costs of this action, including attorneys fees and expenses; and
6. That the United States and the plaintiffs be awarded such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the plaintiffs hereby demand a trial by Jury.

Dated May 3, 2006

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