

**BEFORE THE
UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

**IN RE 3M COMPANY
“LAVA ULTIMATE” LITIGATION**

MDL DOCKET NO. _____

**PLAINTIFFS’ MOTION FOR CONSOLIDATION AND TRANSFER
PURSUANT TO 28 U.S.C. § 1407**

Plaintiffs Vikram Bhatia, D.D.S, Jeffrey Chen, D.D.S., and Bruce Sherrill, D.D.S., Brookhaven Dental Associates, P.C., and Johns Creek Dental Associates, P.C. respectfully request that the Judicial Panel on Multidistrict Litigation (“Panel”) transfer the Related Action listed below and, if filed, any tag-along actions, to the United States District Court for the District of Minnesota for pre-trial coordination.

1. The complaints in both Plaintiff’s case and the Related Action allege that Defendant 3M Company – through its subsidiary division 3M ESPE – (“3M”) misrepresented the durability, efficacy, reliability, and fitness of its Lava Ultimate products for use in dental crowns.

2. The lawsuits allege causes of action based on express and implied warranty, unjust enrichment, fraud and/or fraudulent concealment, and violation of statutory consumer protection laws.

3. The Related Action is another putative class action filed in the United States District Court for the Southern District of Florida (Miami Division) by an individual dentist against 3M: *Lazaro Fernandez, D.D.S. d/b/a Fernandez Dental Center-Miami Lakes Fernandez Dental Office v. 3M Company*, No. 1:16-cv-21490-JAL (Hon. Joan A. Lenard).

4. Transfer is appropriate for several reasons. First, transfer and consolidation of all cases to one district pursuant to 28 U.S.C. § 1407 will eliminate duplicative discovery, prevent

inconsistent rulings on a number of pre-trial issues (including class certification), and conserve the resources of the judicial and the parties.

5. The District of Minnesota should be the locus of the transferred and consolidated actions as it holds unique characteristics that set it apart from any other district to which transfer is possible. The defendant, 3M, is headquartered in St. Paul, Minnesota, which is in the district. This litigation concerns misrepresentations and false and deceptive advertisements that 3M made about its Lava Ultimate products. Plaintiffs allege that many of those misrepresentations, advertisements, communications, and decisions emanated from defendant's headquarters in St. Paul. And there is no evidence that the defendant's design, development, manufacturing or marketing decisions concerning its Lava Ultimate products originated from any district other than the District of Minnesota. Accordingly, St. Paul, Minnesota will be the center of discovery in the consolidated or coordinated cases.

6. St. Paul is also a convenient location for all parties and counsel. The District of Minnesota has the resources to efficiently manage the consolidated actions, and Judge Donovan W. Frank, the judge to whom Plaintiffs' case has been assigned, is well suited to manage this complex case.

For the foregoing reasons and those articulated in their original response, Plaintiffs respectfully request that the Panel transfer the Related Action, and any future cases, to the United States District Court for the District of Minnesota for consolidation before Judge Donovan W. Frank.

Dated: June 8, 2016

Respectfully submitted,

/s/ Warren T. Burns

Warren T. Burns (*Pro Hac Vice* to be filed)

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**BEFORE THE
UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

**IN RE 3M COMPANY
“LAVA ULTIMATE” LITIGATION**

MDL DOCKET NO. _____

**PLAINTIFFS’ BRIEF IN SUPPORT OF
MOTION FOR CONSOLIDATION AND TRANSFER
PURSUANT TO 28 U.S.C. § 1407**

Plaintiffs Vikram Bhatia, D.D.S, Jeffrey Chen, D.D.S., and Bruce Sherrill, D.D.S., Brookhaven Dental Associates, P.C., and Johns Creek Dental Associates, P.C. submit this brief in support of their motion pursuant to 28 U.S.C. § 1407 requesting that the Judicial Panel on Multidistrict Litigation (“Panel”) transfer the Related Action and, if filed, any tag-along actions, to the United States District Court for the District of Minnesota for pre-trial consolidation and coordination.

1. Plaintiffs’ action was filed on behalf of a nationwide class of dentists who purchased hundreds of thousands of defective dental crowns that Defendant 3M Company – and through its subsidiary division 3M ESPE – (“3M”), aggressively marketed and sold across the United States.

2. The Related Action and Plaintiffs’ case share common issues of fact and law. Each alleges that 3M represented the suitability and characteristics of its Lava™ Ultimate Restorative (“Lava Ultimate”) product for dental procedures involving crowns that were done “chairside”—*i.e.*, at the dentist’s office and during a single visit. Each allege that Lava Ultimate failed at an alarming rate; for instance, Plaintiffs experienced debond rates that were orders of magnitude higher than those seen in any other product. Each asserts numerous claims for violations of state consumer protection statutes and related common law causes of action based on 3M’s failed to warn of Lava

Ultimate's propensity for unreasonably high debond rates when the material was used in crowns despite 3M's knowledge that it would.

3. Plaintiff's action was filed in the District of Minnesota – the corporate home of defendant 3M – on May 16, 2016; *Fernandez v. 3M Company*, No. 1:16-cv-21490-JAL, was filed in the United States District Court for the Southern District of Florida (Miami Division), on April 27, 2016.

4. Section 1407 provides for the transfer and consolidation of actions pending in different districts to a single federal district court when such actions involve one or more common questions of fact and it is determined that transfer of such proceedings will benefit the convenience of parties and witnesses and promote the just and efficient conduct of the actions. 28 U.S.C. § 1407(a). Those standards are met here.

A. The Related Actions Present Common Questions of Fact

5. The consolidation and transfer sought involves (currently) two putative nation-wide class actions, each alleging that 3M Company misrepresented the durability, efficacy, reliability, and fitness of its Lava Ultimate products for use in dental crowns. Common questions of fact among the actions include:

- a. The alleged misrepresentations by 3M, as contained in the same advertising and promotional documents and materials cited in each action;
- b. The actual and ultimate causes of the failure of the products;
- c. Which 3M officials knew of the propensity for Lava Ultimate to debond; and
- d. The actions taken to conceal the Lava Ultimate problems from consumers.

6. And even if there are discovery issues somehow “unique” to a single action, the transferee court can formulate a pretrial program that allows for any such unique discovery to proceed concurrently on a separate track along with the permitted discovery on common issues.

See In re Joseph F. Smith Patent [1370] Litigation, 407 F. Supp. 1403, 1404 (J.P.M.L. 1976).

B. The Convenience of Parties and Witnesses Is Facilitated by Transfer and Consolidation

7. The District of Minnesota possesses unique characteristics which set it apart from any other district regarding the relative convenience of the parties and witnesses involved.

8. The defendant, 3M Company, is headquartered in St. Paul, Minnesota, which is in the district.

9. Document discovery regarding the common misrepresentations and false and deceptive advertisements that 3M made about its Lava Ultimate products will necessarily center at defendant's headquarters in St. Paul.

10. The majority of witnesses common to the actions – 3M officials, employees and key decision makers concerning common factual questions – are located in the District and can be deposed there regarding 3M's development, manufacturing, and testing of the Lava Ultimate products, as well as the decisions concerning the marketing and disclosures surrounding its Lava Ultimate products.

11. St. Paul is a convenient location for all parties and counsel; it is centrally located, served by major air carriers from across the country, and can provide coordinated access to documents and witnesses already located there.

C. Transfer Promotes the Just and Efficient Resolution of the Actions.

12. Absent transfer and consolidation, there exists a significant risk that litigation of the Related Actions will engender inconsistent rulings affecting discovery, class certification, and the ultimate disposition of the disputes.

13. However, with a § 1407 transfer and consolidation, duplicative discovery and inconsistent rulings on pre-trial issues will be avoided, and the resources of both the U.S. courts and the parties will be conserved. *In re Rembrandt Techs., LP*, 493 F. Supp. 2d 1367 (J.P.M.L. 2007).

14. As this Court noted in *Gouthro v. GMC (In re GMC "Piston Slap" Prods. Liab. Litig.)*, 314 F. Supp. 2d 1386 (J.P.M.L. 2004), when ordering the consolidation of three putative nationwide class actions, since all posited the same claims based on the same liability facts, "Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to class certification matters), and conserve the resources of the parties, their counsel and the judiciary." The same is true here.

D. The District of Minnesota Is the Proper Venue to Adjudicate These Actions.

15. In determining the appropriate transferee venue, the location of 3M's headquarters and base of operations in the District of Minnesota is a strong factor supporting selection of that district. *In re Nissan North America, Inc., Odometer Litigation*, 542 F. Supp. 2d 1367, 1369 (J.P.M.L. 2008); *In re Factor VIII or IX Concentrate Blood Products Prod. Liab. Litig.*, 853 S. Supp. 454, 455 (J.P.M.L. 1993).

16. As noted, the vast majority of discovery on common issues of fact such as 3M's development, testing, and marketing of the Lava Ultimate products – both documentary and through witness depositions – will be conducted at defendant's headquarters in St. Paul. That alone is justification enough to choose the District of Minnesota as the venue for the consolidated actions. *In re Bair Hugger Forced Air Warming Devices Prod. Liab. Litig.*, MDL No. 2666 (JPML 2015) (consolidating products liability cases in Minnesota where 3M was the defendant and finding that "many witnesses and relevant documents are likely to be found there"); *In re Radio Shack Corp ERISA Litig.*, 528 F. Supp. 2d 1348, 1349 (J.P.M.L. 2007) (consolidating actions in district where defendant's headquarters located since documents and witnesses would likely be found there); *In re UICI Ins. Litig.*, 305 F. Supp. 2d 1360, 1362 (J.P.M.L. 2004) (transferring and consolidating actions to the Northern District of Texas because "the location of ... defendant's headquarters within the

Norther District of Texas implies that relevant witnesses and documents are likely to be found there”).

17. And finally, as the Panel noted in *In re Lending Tree, LLC Customer Data Security Breach Litig.*, 581 F. Supp. 2d 1367, 1368 (J.P.M.L. 2008), the capacity of the proposed transferee district is a proper factor when considering where to transfer and consolidate a matter. Here, the District of Minnesota has the resources to efficiently manage the consolidated actions, and the Hon. Donovan W. Frank, the judge to whom Plaintiffs’ case has been assigned, is well suited to manage this complex case.

For the foregoing reasons and those articulated in their attendant motion, Plaintiffs respectfully request that the Panel transfer the Related Action, and any future cases, to the United States District Court for the District of Minnesota for consolidation before Judge Donovan W. Frank.

Dated: June 8, 2016

Respectfully submitted,

/s/ Warren T. Burns

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UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

**IN RE 3M COMPANY
“LAVA ULTIMATE” LITIGATION**

MDL DOCKET NO. ____

SCHEDULE OF ACTIONS

Case Caption	Court	Civil Action No.	Judge
Plaintiff: Vikram Bhatia, D.D.S., Jeffrey Chen, D.D.S., Bruce Sherrill, D.D.S., Brookhaven Dental Associates, P.C., and Johns Creek Dental Associates, P.C.	D. Minnesota	0:16-cv-01304	Donovan W. Frank
Defendant: 3M Company			
Plaintiff: Lazaro Fernandez, D.D.S. d/b/a Fernandez Dental Center-Miami Lakes Fernandez Dental Office	S.D. Florida	1:16-cv-21490	Joan A. Lenard
Defendant: 3M Company			

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UNITED STATES JUDICIAL PANEL
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REQUEST FOR ORAL ARGUMENT

Plaintiffs Vikram Bhatia, D.D.S, Jeffrey Chen, D.D.S., and Bruce Sherrill, D.D.S., Brookhaven Dental Associates, P.C., and Johns Creek Dental Associates, P.C. respectfully request that the Judicial Panel on Multidistrict Litigation permit them oral argument on their Motion for Consolidation and Transfer Pursuant to 28 U.S.C. § 1407 regarding the instant action.

Dated: June 8, 2016

Respectfully submitted,

/s/ Warren T. Burns

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PROOF OF SERVICE

In compliance with Rule 4.1(a) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, I hereby certify that copies of the foregoing Motion, Brief, Request for Oral Argument, Schedule, and this Certificate of Service were served by certified mail on June 8, 2016, on the following:

Clerk of Court
United States District Court for the
Southern District of Florida, Miami Division
400 North Miami Avenue
Miami, Florida 33128

Clerk of Court
United States District Court for Minnesota
316 North Robert Street, Suite 100
St. Paul, Minnesota 55101

<p>Matthew Weinshall Stephen Rosenthal PODHURST ORSECK et al. 25 W. Flagler Street, Suite 800 Miami, Florida 33130 Counsel for Plaintiff Lazaro Fernandez, DDS, P.A. d/b/a Fernandez Dental Center – Miami Lakes</p> <p>Jordan Lewis KELLEY UUSTAL, PLC 700 SE 3rd Ave., Ste. 300 Ft. Lauderdale, Florida 33316 Counsel for Plaintiff Lazaro Fernandez, DDS, P.A. d/b/a Fernandez Dental Center – Miami Lakes</p>	<p>Aaron Knoll Wendy Wildung FAGRE BAKER DANIELS, LLP 90 S. 7th Street, Suite 2200 Minneapolis, Minnesota 55402 Counsel for Defendant 3M Company</p> <p>Mark Romance RICHMOND GREER, P.A. 396 Alhambra Circle, 14th Floor Miami, Florida 33134 Counsel for Defendant 3M Company</p>
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U.S. District Court
U.S. District of Minnesota (DMN)
CIVIL DOCKET FOR CASE #: 0:16-cv-01304-DWF-JSM

Bhatia et al v. 3M Company
Assigned to: Judge Donovan W. Frank
Referred to: Magistrate Judge Janie S. Mayeron
Cause: 28:1332 Diversity-Fraud

Date Filed: 05/16/2016
Jury Demand: Plaintiff
Nature of Suit: 370 Fraud
Jurisdiction: Diversity

Plaintiff

Vikram Bhatia

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Date Filed	#	Docket Text
05/16/2016	1	CLASS ACTION COMPLAINT against 3M Company. (Filing fee \$ 400 receipt number MNDC-4930636.) Filed by Brookhaven Dental Associates, P.C., Vikram Bhatia, Bruce Sherrill, Jeffrey Chen, Johns Creek Dental Associates, P.C.. Filer requests summons issued. (Attachments: # 1 Civil Cover Sheet) (Hedlund, Daniel) Modified text on 5/19/2016 (LEG). (Entered: 05/16/2016)
05/17/2016	2	TEXT ONLY ENTRY: CLERK'S NOTICE OF INITIAL CASE ASSIGNMENT. Case assigned to Judge Richard H. Kyle per Master List and referred to Magistrate Judge Janie S. Mayeron. Please use case number 16-cv-1304 RHK/JSM. (LEG) (Entered: 05/17/2016)

05/17/2016	3	Summons Issued as to 3M Company. (LEG) (Entered: 05/17/2016)
05/17/2016	4	<p>TEXT ONLY ENTRY: Notice re: Non-Admitted Attorney</p> <p>We have received documents listing Warren T. Burns, Will Thompson, Korey A. Nelson, Charles D. Gabriel, David S. Corwin, Bradley A. Winters, Vicki L. Little as counsel of record. If he or she wishes to be listed as an attorney of record in this case, he or she must be admitted to the bar of the U.S. District Court of Minnesota in accordance with Local Rule 83.5 (a), (b) and (c) or temporarily admitted pro hac vice in accordance with Local Rule 83.5 (d) or (e).</p> <p>For more admissions information and forms, please see the Attorney Forms Section of the courts website at http://www.mnd.uscourts.gov/FORMS/court_forms.shtml#attorneyforms. (LEG) (Entered: 05/17/2016)</p>
05/17/2016	5	ORDER for disqualification and for reassignment. Signed by Judge Richard H. Kyle on 5/17/16. (KLL) (Entered: 05/17/2016)
05/17/2016	6	TEXT ONLY ENTRY: CLERK'S NOTICE OF REASSIGNMENT. This case is reassigned to Judge Donovan W. Frank. Judge Richard H. Kyle no longer assigned to the case. NOTE: the new case number is 16-cv-1304 DWF/JSM . Please use this case number for all subsequent pleadings. (kt) (Entered: 05/17/2016)
05/17/2016	7	MOTION for Admission Pro Hac Vice for Attorney Bradley A. Winters. Filing fee \$ 100, receipt number AMNDC-4932754 by Vikram Bhatia, Brookhaven Dental Associates, P.C., Jeffrey Chen, Johns Creek Dental Associates, P.C., Bruce Sherrill. (Hedlund, Daniel) (Entered: 05/17/2016)
05/17/2016	8	MOTION for Admission Pro Hac Vice for Attorney Charles D. Gabriel. Filing fee \$ 100, receipt number AMNDC-4932758 by Vikram Bhatia, Brookhaven Dental Associates, P.C., Jeffrey Chen, Johns Creek Dental Associates, P.C., Bruce Sherrill. (Hedlund, Daniel) (Entered: 05/17/2016)
05/17/2016	9	MOTION for Admission Pro Hac Vice for Attorney David S. Corwin. Filing fee \$ 100, receipt number AMNDC-4932766 by Vikram Bhatia, Brookhaven Dental Associates, P.C., Jeffrey Chen, Johns Creek Dental Associates, P.C., Bruce Sherrill. (Hedlund, Daniel) (Entered: 05/17/2016)
05/17/2016	10	MOTION for Admission Pro Hac Vice for Attorney Korey A. Nelson. Filing fee \$ 100, receipt number AMNDC-4932773 by Vikram Bhatia, Brookhaven Dental Associates, P.C., Jeffrey Chen, Johns Creek Dental Associates, P.C., Bruce Sherrill. (Hedlund, Daniel) (Entered: 05/17/2016)
05/17/2016	11	MOTION for Admission Pro Hac Vice for Attorney Vicki L. Little. Filing fee \$ 100, receipt number AMNDC-4932779 by Vikram Bhatia, Brookhaven Dental Associates, P.C., Jeffrey Chen, Johns Creek Dental Associates, P.C., Bruce Sherrill. (Hedlund, Daniel) (Entered: 05/17/2016)
05/17/2016	12	MOTION for Admission Pro Hac Vice for Attorney Warren T. Burns. Filing fee \$ 100, receipt number AMNDC-4932785 by Vikram Bhatia, Brookhaven Dental Associates, P.C., Jeffrey Chen, Johns Creek Dental Associates, P.C., Bruce Sherrill. (Hedlund, Daniel) (Entered: 05/17/2016)

05/17/2016	13	MOTION for Admission Pro Hac Vice for Attorney Will Thompson. Filing fee \$ 100, receipt number AMNDC-4932790 by Vikram Bhatia, Brookhaven Dental Associates, P.C., Jeffrey Chen, Johns Creek Dental Associates, P.C., Bruce Sherrill. (Hedlund, Daniel) (Entered: 05/17/2016)
05/18/2016	14	TEXT ONLY ENTRY: ORDER granting 8 Motion for Admission Pro Hac Vice of Attorney Charles D. Gabriel for Vikram Bhatia, for Brookhaven Dental Associates, P.C., for Jeffrey Chen, for Johns Creek Dental Associates, P.C., and for Bruce Sherrill; granting 9 Motion for Admission Pro Hac Vice of Attorney David S. Corwin for Vikram Bhatia, for Brookhaven Dental Associates, P.C., for Jeffrey Chen, for Johns Creek Dental Associates, P.C., and for Bruce Sherrill; and granting 11 Motion for Admission Pro Hac Vice of Attorney Vicki L. Little for Vikram Bhatia, for Brookhaven Dental Associates, P.C., for Jeffrey Chen, for Johns Creek Dental Associates, P.C., and for Bruce Sherrill. Approved by Magistrate Judge Janie S. Mayeron on 5/18/2016. (JLW) (Entered: 05/18/2016)
05/18/2016	15	SUMMONS Returned Executed by Brookhaven Dental Associates, P.C., Vikram Bhatia, Bruce Sherrill, Jeffrey Chen, Johns Creek Dental Associates, P.C.. 3M Company served on 5/18/2016, answer due 6/8/2016. (Hedlund, Daniel) (Entered: 05/18/2016)
05/18/2016	16	TEXT ONLY ENTRY: ORDER granting 7 Motion for Admission Pro Hac Vice of Attorney Bradley A. Winters for Vikram Bhatia, for Brookhaven Dental Associates, P.C., for Jeffrey Chen, for Johns Creek Dental Associates, P.C., for Bruce Sherrill. Approved by Magistrate Judge Janie S. Mayeron on 5/18/2016. (JLW) (Entered: 05/18/2016)
05/18/2016	17	TEXT ONLY ENTRY: ORDER granting 10 Motion for Admission Pro Hac Vice of Attorney Korey A. Nelson for Vikram Bhatia, for Brookhaven Dental Associates, P.C., for Jeffrey Chen, for Johns Creek Dental Associates, P.C., and for Bruce Sherrill; and granting 13 Motion for Admission Pro Hac Vice of Attorney William B. Thompson for Vikram Bhatia, for Brookhaven Dental Associates, P.C., for Jeffrey Chen, for Johns Creek Dental Associates, P.C., and for Bruce Sherrill. Approved by Magistrate Judge Janie S. Mayeron on 5/18/2016. (JLW) (Entered: 05/18/2016)
05/18/2016	18	TEXT ONLY ENTRY: ORDER granting 12 Motion for Admission Pro Hac Vice of Attorney Warren T. Burns for Vikram Bhatia, for Brookhaven Dental Associates, P.C., for Jeffrey Chen, for Johns Creek Dental Associates, P.C., and for Bruce Sherrill. Approved by Magistrate Judge Janie S. Mayeron on 5/18/2016. (JLW) (Entered: 05/18/2016)
05/26/2016	19	NOTICE of Leave of Absence for Charles D. Gabriel by Vikram Bhatia, Brookhaven Dental Associates, P.C., Jeffrey Chen, Johns Creek Dental Associates, P.C., Bruce Sherrill. (Gabriel, Charles) Modified text on 5/31/2016 (LEG). (Entered: 05/26/2016)
05/31/2016	20	STIPULATION <i>for an Extension of Time to Respond to the Complaint</i> by 3M Company. Jointly Signed by Vikram Bhatia, D.D.S., Jeffrey Chen, D.D.S., Bruce Sherrill, D.D.S., Brookhaven Dental Associates, P.C., and Johns Creek Dental Associates, P.C.. (Attachments: # 1 Certificate of Service of Proposed Order)(Knoll, Aaron) Modified text on 6/1/2016 (LEG). (Entered: 05/31/2016)

06/07/2016

[21](#)

ORDER re [20](#) Stipulation. 3M Company answer due 6/28/2016. Signed by Magistrate Judge Janie S. Mayeron on 6/7/16. (LPH) (Entered: 06/07/2016)

PACER Service Center			
Transaction Receipt			
06/08/2016 09:08:44			
PACER Login:	burnscharest2015	Client Code:	
Description:	Docket Report	Search Criteria:	0:16-cv-01304-DWF-JSM
Billable Pages:	11	Cost:	1.10

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

VIKRAM BHATIA, D.D.S., JEFFREY
CHEN, D.D.S., BRUCE SHERRILL, D.D.S.,
BROOKHAVEN DENTAL ASSOCIATES,
P.C., JOHNS CREEK DENTAL
ASSOCIATES, P.C., on Behalf of
Themselves and All Others Similarly
Situated,

Plaintiffs,

v.

3M COMPANY,

Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs Vikram Bhatia, D.D.S, Jeffrey Chen, D.D.S., Bruce Sherrill, D.D.S., Brookhaven Dental Associates, P.C., and Johns Creek Dental Associates, P.C., by and through their undersigned attorneys, file this original class action complaint, both individually and on behalf of a class of all those similarly situated.

NATURE OF THE ACTION

1. This case involves hundreds of thousands of defective dental crowns that Defendant 3M Company and through its subsidiary division 3M ESPE (“3M”) aggressively marketed and sold to dentists around the country. 3M represented that its Lava™ Ultimate Restorative (“Lava Ultimate”) provided dentists and patients with a combination of aesthetics and durability that had previously been unavailable in

restorations that were done “chairside”—*i.e.*, at the dentist’s office and during a single visit. Lava Ultimate, however, failed at an alarming rate. Plaintiffs experienced debond rates that were orders of magnitude higher than those seen in any other product. In fact, dentists around the country have reported failure rates up to 50%.

2. Lava Ultimate is a defective product as evidenced by these high failure rates; specifically, Lava Ultimate is defective because of the manner in which the crown flexes when under pressure and its failure to accept affixation through recommended bonding or cementation procedures. Despite its knowledge of the defect and the unacceptable debond rate, 3M continued to tout Lava Ultimate’s durability for crowns. 3M engaged in a widespread marketing campaign that advertised the durability of Lava Ultimate and its appropriateness for crowns. 3M continued this campaign despite its knowledge of Lava Ultimate’s defects, and 3M reaped substantial profits by not disclosing the product’s defects. When faced with dentist complaints that Lava Ultimate was defective, 3M, rather than accept responsibility and acknowledge the defect, chose to blame the dentists’ techniques for Lava Ultimate’s unacceptable debond rates.

3. *Finally*, on June 12, 2015, 3M admitted that Lava Ultimate was defective and inappropriate for restorative crowns—a fact that it had known for years, yet failed to disclose for self-serving reasons.

4. Plaintiffs, individually and on behalf of all others similarly situated, now seek an award of damages, disgorgement of profits, and any other appropriate relief that they are due because of 3M’s unlawful conduct.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from one defendant; there are more than 100 class members; the aggregate amount in controversy exceeds \$5,000,000; and minimal diversity exists.

6. This Court has personal jurisdiction over 3M because the company maintains its principal place of business in St. Paul, Minnesota, regularly conducts business in Minnesota, and has sufficient minimum contacts with Minnesota. 3M intentionally avails itself of this jurisdiction by marketing and selling products, including Lava Ultimate, from Minnesota.

7. Venue is proper in this District under 28 U.S.C. § 1391 because 3M resides in the District, a substantial part of the events or omissions giving rise to the claims occurred and/or emanated from this District, and 3M has caused harm to class members residing in this District.

PARTIES

8. Plaintiff Vikram Bhatia, D.D.S., is a resident and citizen of Georgia. Dr. Bhatia purchased Lava Ultimate products for use in dental crowns and indeed used Lava Ultimate for his patients' dental crowns.

9. Plaintiff Jeffrey Chen, D.D.S., is a resident and citizen of Georgia. Dr. Chen purchased Lava Ultimate products for use in dental crowns and indeed used Lava Ultimate for his patients' dental crowns.

10. Plaintiff Bruce Sherrill, D.D.S., is a resident and citizen of Texas. Dr. Sherrill purchased Lava Ultimate products for use in dental crowns and indeed used Lava Ultimate for his patients' dental crowns.

11. Plaintiff Brookhaven Dental Associates, P.C., is a professional corporation organized under the laws of Georgia, with its principal place of business at 1407 Dresden Dr., Suite 200, Atlanta, GA, 30319.

12. Plaintiff Johns Creek Dental Associates, P.C., is a professional corporation organized under the laws of Georgia, with its principal place of business at 10305 Medlock Bridge Road B3, Johns Creek, GA, 30097.

13. Defendant 3M is a corporation doing business in every U.S. state, the District of Columbia, and territories of the U.S. 3M is organized under the laws of Delaware, with its principal place of business at 3M Center, St. Paul, Minnesota, where 3M makes decisions about the research, development, marketing, and sale of its products, including Lava Ultimate.

FACTUAL ALLEGATIONS

A. Dental Restorations

14. A dental restoration consists of material used to restore the function, integrity, and morphology of missing tooth structure. Restorations range from small fillings to larger procedures like crowns and bridges. Generally, a restoration (and the material from which it is created) should be durable, aesthetically pleasing, and efficient to manufacture. And ideally, the application process should cause minimal pain and inconvenience to the patient. Since the advent of modern dentistry in the mid-1900s,

dentists have sought a single restoration material that can be used for a broad range of dental procedures. Finding such a material, has proven elusive.

15. Because no single restoration material possessed all the qualities noted above, dentists had to choose between different materials and methods depending on the restoration that the patient required.

16. Fillings and small cavities, for example, are “direct restorations” a dentist can fabricate the restoration directly inside the patients’ mouth. Direct restorations are relatively convenient for patients because a dentist performs the restoration “chairside.” In other words, the dentist places, cures, and shapes the restoration material in the patient’s mouth during a single sitting.

17. But as damage to the tooth becomes more extensive, placing, curing, and shaping the restoration directly inside a patient’s mouth becomes impossible or impractical. In these cases, “indirect restorations” are done, in which the dentist fabricates the restoration outside the patient’s mouth. Depending on the extent and location of damage, a dentist may bond a unique inlay, onlay, veneer, or crown to the patient’s existing tooth structure. A veneer can be placed on the surface of a tooth to protect it from damage, but it is generally used only for aesthetic purposes. Dental inlays and onlays are indirect restorations for moderate tooth damage. Inlays fill the space in the center of the tooth between the rounded edges of the tooth, and onlays cover the edges of the tooth.

18. In some cases, a tooth is too damaged for an inlay or an onlay. If, for example, a patient has a large cavity, fractured her tooth, or needs a root canal, the patient

may require a dental full crown, which is sometimes referred to as a “prosthetic crown.” A dental crown is a tooth-shaped cap that completely covers a tooth or dental implant.

19. In the past, patients receiving dental crowns typically had to make two visits (or occasionally more) to the dentist. Multiple trips were necessary because dentists could not shape, place, and cure the crown chairside during a single sitting. A patient would first go to the dentist for an initial visit where the dentist would create a molding or impression of the damaged tooth. The dentist would fit the patient with a temporary prosthetic crown that would last until the patient returned for a subsequent visit.

20. The dentist would send that molding or impression to an off-site laboratory that would cast and shape the prosthetic crown. The laboratory technician had to take great care in shaping the prosthetic to ensure that the crown would bond correctly to the tooth structure and fit properly with the patient’s gums and other teeth. Laboratory technicians usually cast the prosthetic in metal, so if the patient wanted an aesthetically pleasing tooth, the laboratory technician would have to go through the time-consuming process of incrementally placing and baking ceramic material onto the prosthetic.

21. During the patient’s subsequent visit, the dentist would fit and cement or otherwise bond the prosthetic crown to the patient’s existing tooth.

22. This two-step process has multiple disadvantages. First, it is difficult to take an accurate impression of the patient’s tooth, and the fabricating process is extremely labor intensive. As a result, there is a high potential for human error. Further, patients have to undergo different dental procedures over the course of separate office visits—doubling

the time the patient has to endure the discomfort from the dental work and sedation as well as increasing the inconvenience and expense of multiple trips to the dentist.

B. Dentists begin to use computer-assisted restorations to reduce the time to create crowns and other indirect restorations.

23. To overcome the limitations of indirect restorations, scientists in the early 1980s implemented computer-aided design and computer aided manufacturing (“CAD/CAM”) restorations. CAD/CAM restorations involve taking digital impressions of the tooth and mouth using different types of scans. Proprietary software analyzes these scans and then creates a design that is sent to a machine that mills or prints a three-dimensional prosthetic tooth.

24. Although CAD/CAM restorations reduced human error in the fabrication process, they did not materially improve on the traditional two-visit indirect restoration process that dentists had traditionally used. Early CAD/CAM shaping and curing still had to be done off-site because the machines milled the crown were too big to fit in an office. Consequently, dental crowns in most cases still could not be created “chairside,” and patients still had to make separate visits to the dentist for the fitting and bonding portions of the procedure.

25. A breakthrough occurred, however, in the mid-1980s when Professor Werner H. Mörmann and Dr. Marco Brandestini developed the Chairside Economical Restoration of Esthetic Ceramics (“CEREC”). As the name suggests, CEREC allows dentists to construct, produce, and insert indirect restorations chairside in a single

appointment. As of October 2013, around 38,000 dentists worldwide use CEREC to produce around 6.9 million restorations each year.

26. But despite the technological leaps that accomplished through CEREC machines, there were still problems because the materials that were compatible with the CEREC machine could not be used across a wide spectrum of restorations. Early CEREC inlays, onlays, veneers, and crowns were made out of ceramics. Glass ceramics are weaker materials that are susceptible to chipping, but they are convenient because dentists can mill them chairside using a CEREC machine in a relatively short time period. Zirconia restorations, on the other hand, are extremely durable and fracture-resistant, which enables multi-tooth restorations; however, the material requires a long strengthening procedure, which makes chairside production impractical in most cases.

27. Because no single restoration material addressed the wide variety of issues that dentists face, dentists had to purchase numerous types of restoration material, many of which required different techniques for creation and application.

C. 3M Introduces Lava Ultimate

28. 3M introduced Lava Ultimate as a chairside solution to the problems dentists faced in performing indirect restorations. 3M sought and obtained clearance from the Food and Drug Administration (“FDA”) to market Lava Ultimate under Section 510(k) of the Medical Device Amendment to the Food, Drug, and Cosmetics Act.

29. Section 510(k) provides for marketing of a medical device if the device is deemed “substantially equivalent” to other predicate devices marketed prior to May 28,

1976. No formal review for safety or efficacy is required, and no formal review for safety or efficacy was ever conducted with regard to the products.

30. 3M's application to the FDA for 510(k) approval described Lava Ultimate as "a strong, wear-resistant and highly esthetic mill block that provides a fast and easy to use alternative to porcelain blocks" and indicates that it should be used for "inlays, onlays, veneers, and *full crown restorations, including crowns on implants.*" (emphasis added)

31. In a January 2011 letter, the FDA determined that Lava Ultimate was "substantially equivalent" and allowed it to be legally marketed "subject to the general controls provisions of the Act." The 2011 letter from the FDA further classified Lava Ultimate as a Class II medical device and advised that 3M "must comply with all the Act's requirements, including, but not limited to: registration and listing (21 CFR Part 807); labeling (21 CFR Part 801); medical device reporting (reporting of medical device-related adverse events (21 CFR Part 820)."

32. Following FDA approval 3M launched Lava Ultimate in or around 2011. 3M pitched Lava Ultimate as durable enough for use in any type of restoration, convenient enough to be milled chairside, and aesthetically pleasing to patients and dentists alike. As a result, 3M marketed Lava Ultimate as suitable for many types of indirect dental restorations, including crowns.

33. 3M stated that Lava Ultimate was fracture resistant like a composite, aesthetically pleasing like a ceramic, and able to be milled chairside. Specifically, 3M described Lava Ultimate as, "A resin nano ceramic [that] has an elastic modulus that's comparable to dentin—which is much lower than what brittle glass ceramic materials or

PFM veneering porcelains provide. This enables Lava Ultimate Restorative to better absorb chewing forces and reduce stress to the CAD/CAM restoration.”¹ 3M represented that Lava Ultimate’s elasticity allows it to better “give way” as compared to glass ceramic materials, which supposedly increased durability. In addition, 3M proclaimed that Lava Ultimate has better “bounce back” and absorbs more stress without suffering permanent deformation or failure. 3M also marketed Lava Ultimate as being gentle to other teeth in the mouth.

34. In addition to the characteristics noted above, 3M also marketed Lava Ultimate as being more economic than the industry leading “E-Max” crown from Ivoclar Vivadent.

35. Based on 3M’s representations and aggressive marketing, Plaintiffs and the class members purchased 3M’s Lava Ultimate product for use in dental crowns.

D. 3M’s Lava Ultimate contains a defect resulting in a shockingly high failure rate when the material is used in crowns.

36. Shortly after hitting the market in 2011, prosthetic crowns made using Lava Ultimate began debonding at an alarming rate. The debonding failures were due to defects in Lava Ultimate. Lava Ultimate exhibits poor bond strength in general, irrespective of the different application protocols that 3M recommended. The poor bond strength was exacerbated by, among other things, the material’s flexibility. All of 3M’s Lava Ultimate products have this defect. And only 3M had access to the information about

¹ “Lava Ultimate Lab Brochure,” <http://jensendental.com/wp-content/uploads/2015/04/Lava-Ultimate-Lab-Brochure.pdf> (last visited on May 6, 2016).

the products' high debond and failure rate. 3M failed to disclose, at and after the time of purchase, that Lava Ultimate was defective and not fit for use in crowns.

37. For example, Lava Ultimate is packaged in a sealed box with labeling on the outside. 3M placed warnings and/or instructions on the outside of the box. These packages, however, did not warn or otherwise inform Plaintiffs and Class Members about the high debond rates or the inappropriateness of Lava Ultimate for use in crowns. Each package in which Lava Ultimate was sent was defective and contained material omissions concerning the label's failure to note the unreasonably high rate of debonding due to the materials flex.

38. 3M failed to warn Plaintiffs and the Class despite having knowledge about Lava Ultimate's propensity for unreasonably high debond rates when the material was used in crowns. This deception and withholding of internal information in the face of communications from dentists around the country complaining about the high failure rate continued until June 12, 2015, when 3M finally acknowledged that the high rate of debonds made Lava Ultimate unacceptable for use in crowns. 3M's marketing and statements prior to June 12, 2015 were knowingly and intentionally false; 3M intended to deceive Plaintiffs and the Class into believing that Lava Ultimate was an effective material for crowns, when in fact 3M knew it was a defective product that resulted in harm to dentists and patients.

39. For example, in Lava Ultimate's Technical Product Profile, 3M indicated that Lava Ultimate could be used for "[p]ermanent, adhesive, single-tooth restorations including crowns [and] crowns over implants."

40. Similarly, in a 2012 brochure, 3M represented that Lava Ultimate’s “innovative characteristics make it especially impressive for implant-supported crowns. And it’s reliable in that tough role, just imagine how it will perform in other challenging single-unit indications.” As an example of a single-unit application in which Lava Ultimate excels, 3M specifically lists crowns.

41. Consistent with 3M’s refusal to acknowledge Lava Ultimate’s defects, when one dentist complained to 3M about the abnormally large number of Lava Ultimate debonds, 3M represented that “[w]e have no reason to believe that our materials were defective.”

42. Plaintiffs and the Class had no knowledge and no effective way to know that Lava Ultimate was defective. And had Plaintiffs and the class known of Lava Ultimate’s defect, they would not have purchased the material or not used the material for crowns.

E. 3M finally acknowledges the failure of its product and instructs dentists to stop using Lava Ultimate for crowns.

43. 3M initially tried to place the blame for the high debond rate of Lava Ultimate on dentists by suggesting that the crowns were applied improperly. 3M updated the guidelines for installing crowns made with Lava Ultimate. But, unsurprisingly, the updated installation protocols did not solve the debond problem; regardless of the installation method, crowns made with Lava Ultimate continued to debond at an alarming rate.

44. On June 12, 2015, 3M issued a new protocol for the use of Lava Ultimate and finally acknowledged that Lava Ultimate was not appropriate for crowns. 3M sent a

letter to dentists stating that Lava Ultimate should no longer be used for dental crowns. The letter stated: “3M Oral Care is removing the crown indication for Lava Ultimate CAD/CAM Restorative Product because crowns are debonding at a higher-than anticipated rate” In bold print, 3M sent the following warning:

IMPORTANT: Do not use Lava Ultimate restorative for any type of crown because there exists a potential for debonding.

45. On June 15, 2015, the FDA classified 3M’s letter to dentists as a Class II recall. A Class II recall is defined as: a situation in which use of, or exposure to, a violative product may cause temporary or medically reversible adverse health consequences or where the probability of serious adverse health consequences is remote.

46. At the time of the recall, 3M had distributed over 1 million of these defective products.²

F. Lava Ultimate’s defects harm dentists.

47. Because patients correctly expect that they should not bear the repair costs associated with a defective crown, dentists must bear the costs of Lava Ultimate’s defects. This is especially problematic because often times a crown debonding is considered an emergency event that requires prompt attention. The dentist must:

- x-ray the patient,
- administer anesthetic to the patient,
- clean the old crown,
- re-clean and prep the tooth, and
- reapply the bonding agent.

² FDA Enforcement Report – Week of July 15, 2015, https://www.accessdata.fda.gov/scripts/enforcement/enforce_rpt-Product-Tabs.cfm?action=select&recall_number=Z-2052-2015&w=07152015&lang=eng (last visited May 6, 2016).

48. In addition, many patients require sedation, which further increases the costs to the dentist.

49. In a significant number of incidents, dentists have had to replace the restoration with a new crown with all the attendant time, inconvenience, material and labor costs, and loss of good will incurred by the dentists

50. Repairing a failed Lava Ultimate crown typically takes at least two hours. 3M does not compensate dentists for the cost of their materials or the time spent repairing the failed crowns. Dentists are forced to bear the cost of replacement alone.

CLASS ACTION ALLEGATIONS

51. Plaintiffs bring this lawsuit as a class action on behalf of themselves, and all others similarly situated as members of the proposed class, under Federal Rules of Civil Procedure 23(a) and (b)(3). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

52. The Class is defined as:

All dentists or corporate dental practices in the United States, Commonwealth of Puerto Rico, U.S. Virgin Islands, and Guam who purchased and/or used 3M's Lava™ Ultimate Restorative.

53. Excluded from the Class are the defendant, its employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case, and all persons within the third degree of relationship to any such persons.

54. **Numerosity:** Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, 3M sold and/or distributed over 1 million Lava Ultimate products, and the number of class members is likely in the thousands. Joinder under such numbers is impracticable. The disposition of the claims of the class in a single action will provide substantial benefits to all parties and to the Court. Further, the Class Members are readily identifiable from information and records in 3M's possession, custody, or control.

55. **Typicality:** The representative plaintiffs' claims are typical of the claims of the Class Members in that the representative plaintiffs, like all Class Members, purchased a common product—Lava Ultimate—made from a common engineering and manufacturing process. The defect and susceptibility to debonding in Lava Ultimate products Plaintiffs purchased is typical of the defects that the Class experienced. Moreover, Plaintiffs, like all Class Members, purchased Lava Ultimate in a transaction that was part of 3M's coordinated marketing effort, which was comprised of common representations about Lava Ultimate.

56. **Commonality:** There are numerous questions of law and fact common to Plaintiffs and the Class Members, and those issues predominate over any question affecting only individual Class Members. The common legal and factual issues include the following:

- a. Whether Lava Ultimate was defective;
- b. Whether Lava Ultimate debonded at an abnormally high rate;
- c. Whether 3M knew about the defect before June 12, 2015 and, if so, how long 3M knew about the defect;

- d. Whether the defective nature of Lava Ultimate constitutes a material fact to a reasonable dentist purchasing restorative material for crowns;
- e. Whether 3M had a duty to disclose the defective nature of Lava Ultimate;
- f. Whether 3M breached implied or express warranties;
- g. Whether 3M engaged in conduct that violated Minnesota's consumer protection statutes—including the Minnesota Prevention of Consumer Fraud Act and the Minnesota Uniform Deceptive Trade Practices Act;
- h. Whether Plaintiffs and the class members are entitled to equitable relief, including declaratory relief; and
- i. Whether Plaintiffs and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.

57. **Adequate Representation:** Plaintiffs will fairly and adequately protect the interests of the Class Members. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including consumer and product defect class actions, and Plaintiffs intend to prosecute this action vigorously.

Certification under Federal Rule of Civil Procedure 23(b)(3): Superiority and Predominance.

58. Plaintiffs and the Class Members have all suffered and will continue to suffer harm and damages as a result of 3M's wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of claims by many members of the proposed class who could not individually afford to litigate a claim such as is asserted in

this complaint. This class action likely presents no difficulties in management that would preclude maintenance as a class action.

TOLLING OF THE STATUTE OF LIMITATIONS

59. Plaintiffs and Class Members had no realistic opportunity to know that Lava Ultimate was defective and suffered from an abnormally high number of debonds until June 12, 2015—the date on which 3M issued the statement that Lava Ultimate was unsuitable for crowns—and thereafter as patients with existing restorations continue to present with debonding emergencies. In addition, despite their due diligence, Plaintiffs and the Class could not reasonably have expected to learn or discover that 3M concealed material information about Lava Ultimate until June 12, 2015.

60. 3M's knowledge and active concealment of the defect has tolled any applicable statute of limitation. 3M is estopped from relying on any statute of limitation because the company concealed knowledge about Lava Ultimate's true characteristics.

61. Because the Plaintiffs and the Class could not have reasonably known about the factual basis for their claims until (at the earliest) the date on which 3M issued the statement that Lava Ultimate suffered from an abnormally large number of debonds, accrual of their claims did not begin (at the earliest) until June 12, 2015.

CAUSES OF ACTION

Count 1: Breach of Express Warranty (Minn. Stat. §§ 336.2-313 & 336.2a-210)

62. Plaintiffs re-allege and incorporate by reference all the above allegations as if fully set forth herein. Plaintiffs bring this claim on behalf of the Class Members.

63. 3M is and was at all relevant times a “merchant” with respect to Lava Ultimate Product under Minn. Stat. § 336.2-104(1) and a “seller” of Lava Ultimate under § 336.2-103(1)(d).

64. Lava Ultimate is and was at all relevant times a “good” within the meaning of Minn. Stat. §§ 336.2-105(1) and 336.2A-103(1)(h).

65. In connection with the purchase or sale of each Lava Ultimate product, provided an express warranty for a period for a period of 10 years.

66. Plaintiffs and Class Members experience defects within the warranty period. Despite the existence of these warranties, 3M failed to inform Plaintiffs or the Class Members about the defects in Lava Ultimate until June 12, 2015, and failed to remedy the defective crowns free of charge.

67. In addition, 3M also expressly warranted that Lava Ultimate was appropriate for crowns, stating that “its innovative characteristics make it especially impressive for implant-supported crowns.” 3M stated that Lava Ultimate is “reliable” and had “impressive durability” with “excellent resiliency.” 3M made these representations above a graphic showing Lava Ultimate being used for a crown. According to 3M’s marketing materials, Lava Ultimate’s “high flextural strength (200 MPa) adds to posterior restoration.”

68. 3M’s warranties formed a basis of the bargain that was reached when Plaintiffs and Class Members purchased Lava Ultimate.

69. Allowing 3M reasonable opportunity to cure its breach of written warranties is unnecessary and would be futile here. 3M has already conceded that Lava Ultimate

debonds at an unacceptable rate for crowns and no longer should be used for crowns. 3M's admissions are proof that the warranty on the crowns fails in its essential purpose because 3M cannot meet the promise or repair the crowns.

70. Therefore, Plaintiffs and Class Members' recovery is not restricted to any aspect of the warranty promising to repair and/or correct a manufacturing defect, and such a limited remedy would not make Plaintiff or the Class whole. Plaintiffs and the Class therefore seek all remedies allowed by law.

71. Moreover, as alleged in more detail herein, at the time that 3M warranted and sold Lava Ultimate, it knew that the product was inherently defective and did not conform to its warranties. And 3M wrongfully and fraudulently concealed material facts regarding Lava Ultimate. Plaintiffs and the Class were therefore induced to purchase the product under false and/or fraudulent pretenses.

72. Because of 3M's breach of express warranties as set forth herein, Plaintiffs and the Class Members assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to Plaintiffs and Class Members of the purchase of all Lava Ultimate products currently owned, and for such other incidental and consequential damages as allowed.

73. 3M was provided notice of these issues by numerous complaints that dentists made against them. 3M settled many of these disputes before litigation was commenced. The current complaint also provides notice to 3M.

74. As a direct and proximate result of 3M's breach of express warranties, Plaintiff and the Class Members have been damaged in an amount to be determined at trial.

Count 2: Breach of Implied Warranty (Minn. Stat. §§ 336.2-314 and 336.2A-212)

75. Plaintiffs re-allege and incorporate by reference all the above allegations as if fully set forth herein. Plaintiffs bring this claim on behalf of the Class Members.

76. 3M is and was at all relevant times a "merchant" with respect to Lava Ultimate products under Minn. Stat. § 336.2-104(1) and "sellers" of Lava Ultimate under § 336.2-103(1)(d).

77. Lava Ultimate is and was at all relevant times "goods" within the meaning of Minn. Stat. § 336.2-105(1) and 336.2A-103(1)(h).

78. A warranty that Lava Ultimate was in merchantable condition and fit for the ordinary purpose for which dental restorations are used is implied by law pursuant to Minn. Stat. §§ 336.2-314 and 336.2A-212.

79. Lava Ultimate, when sold and at all times thereafter, was not in merchantable condition and is not fit for the ordinary purpose for use in a dental crown. Specifically, Lava Ultimate is inherently defective because it debonds at an unreasonably high rate, resulting in it not being fit for the purposes for which it was marketed and sold to Plaintiff and Class Members.

80. 3M was provided notice of these issues by the instant complaint and numerous letters and communications that Plaintiffs and/or Class Members sent 3M.

81. As a direct and proximate result of 3M’s breach of the implied warranty of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

Count 3: Violation of Minnesota Uniform Deceptive Trade Practices Act (Minn. Stat. § 325d.43-48, *et seq*)

82. The Minnesota Deceptive Trade Practices Act (“Minnesota DTPA”) prohibits deceptive trade practices, which occur when a person “(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;” “(7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;” and “(9) advertises goods or services with intent not to sell them as advertised.” Minn. Stat. § 325D.44.

83. In the course of 3M’s business, it engaged in deceptive practices by representing that Lava Ultimate has characteristics, ingredients, uses, benefits, or qualities that it does not have; representing that Lava Ultimate is a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another; and advertising Lava Ultimate with intent not to sell it as advertised. 3M participated in misleading, false, or deceptive acts that violated the Minnesota DTPA. By failing to disclose and by actively concealing the high debond rates of Lava Ultimate 3M engaged in deceptive business practices prohibited under the Minnesota DTPA.

84. 3M's actions as set forth above occurred in the conduct of trade or commerce.

85. In the course of its business, 3M willfully failed to disclose and actively concealed the high debond rates of Lava Ultimate. 3M also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of Lava Ultimate.

86. 3M knew the true nature of Lava Ultimate's high debond rate since well before it publically acknowledged the defect on June 12, 2015. Before acknowledging such defects, 3M had entered into confidential settlements with dentists based on Lava Ultimate's high debond rates in 2014. Indeed, in September 2014, 3M circulated a questionnaire to dentists asking for information about debond rates.

87. 3M intentionally and knowingly misrepresented material facts regarding Lava Ultimate with the intent to mislead Plaintiffs and the Class.

88. 3M knew or should have known that its conduct violated the Minnesota DTPA. And 3M's unfair or deceptive acts or practices were likely to and did in fact deceive Plaintiffs and the Class about the true characteristics and value of Lava Ultimate.

89. Plaintiff and the Class suffered ascertainable loss and actual damages as a direct and proximate result of 3M's misrepresentations and its concealment of and failure to disclose material information about Lava Ultimate. Plaintiffs and the Class who purchased Lava Ultimate would not have purchased Lava Ultimate if the products' true

nature had been disclosed, or would have paid significantly less for it. Plaintiffs did not receive the benefit of their bargain as a result of 3M's misconduct.

90. Pursuant to Minn. Stat. § 8.31(3a) Plaintiffs and the Class seek actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota DTPA. This action will achieve a public benefit. The misrepresentations by 3M was significant and directly contributed to the harm suffered by Plaintiffs and Class Members. The misrepresentations were made to increase profits at the expense of Plaintiffs and their patients. Plaintiffs and Class Members seek monetary and injunctive relief, in order to stop further damage to the business of dentists throughout the country.

91. In the alternative, pursuant to Minn. Stat. § 325D.45, Plaintiffs and Class Members are likely to be harmed going forward by the sale and distribution of Lava products. 3M has attempted to inform the public that Lava Ultimate cannot be used for crowns; however, it is still sold for inlays and onlays putting Plaintiffs at risk if they have not yet been informed of the potential dangers of Lava Ultimate. The only way to adequately stop 3M from harming plaintiffs is through injunctive relief. 3M willfully engaged in deceptive trade practices in violation of the DTPA, and as a result, Plaintiffs and Class Members are entitled to costs and attorneys' fees.

Count 4: Minnesota Prevention of Consumer Fraud Act (Minn. Stat. § 325f.68, *et seq.*)

92. Plaintiffs re-allege and incorporate by reference all the above allegations as if fully set forth herein. Plaintiffs bring this claim on behalf of the Class Members.

93. 3M's Lava Ultimate constitutes "merchandise" within the meaning of Minn. Stat. § 325F.68(2). The Minnesota Prevention of Consumer Fraud Act ("Minnesota CFA") prohibits "[t]he act, use, or employment by any person of any fraud, false pretense, false promise."

94. The Minnesota Prevention of Consumer Fraud Act ("Minnesota CFA") prohibits "[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby." Minn. Stat. § 325F.69(1). 3M participated in misleading, false, or deceptive acts that violated the Minnesota CFA.

95. In the course of their business, 3M concealed and suppressed material facts concerning Lava Ultimate. 3M did this by failing to disclose the high rate of Lava Ultimate debonds as well as admit that Lava Ultimate had defects that led to such debonds. Plaintiffs and the Class had no way of discerning that 3M's representations about Lava Ultimate were false and misleading. 3M's conduct constituted misleading, false, unfair or deceptive acts or practices that violated the Minnesota CFA. 3M knew or should have known that its conduct violated the Minnesota CFA, and 3M owed Plaintiffs and the Class a duty to disclose the defects.

96. 3M's unfair or deceptive acts or practices were likely to and did in fact deceive Plaintiffs and the Class about the true characteristics of Lava Ultimate, including the high debond rate. Plaintiffs and the Class suffered ascertainable loss and actual damages as a direct and proximate result of 3M's misrepresentations about the

characteristics of Lava Ultimate. Indeed, Plaintiffs and the Class would not have purchased Lava Ultimate for crowns if the product's true nature had been disclosed, or would have paid significantly less for the product than they did.

97. 3M's unlawful acts and practices complained of herein affect the public interest. As a direct and proximate result of 3M's violations of the Minnesota CFA, Plaintiffs and the Class have suffered injury-in-fact and/or actual damage. Pursuant to Minn. Stat. § 8.31(3a), Plaintiffs and the Class seek actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota CFA. Plaintiffs also seek punitive damages under Minn. Stat. § 549.20(1)(a) given the clear and convincing evidence that 3M's acts show deliberate disregard for the rights or safety of others. Plaintiffs and the Class seek actual damages, attorneys' fees, and any other just and proper relief available under the Minnesota DTPA. This action will achieve a public benefit. The misrepresentations by 3M was significant and directly contributed to the harm suffered by Plaintiffs. The misrepresentations were made to increase profits at the expense of Plaintiffs and their patients. Plaintiffs seek monetary and injunctive relief, in order to stop further damage to the business of dentists throughout the country.

98. In the alternative, pursuant to Minn. Stat. § 325F.70, Plaintiffs request that this Court enjoin Defendant from engaging in misrepresentation and deceptive practices.

Count 5: Indemnity based on Products Liability

99. Plaintiffs re-allege and incorporate by reference all the above allegations as if fully set forth herein. Plaintiffs bring this claim on behalf of the Class Members.

100. Manufacturers are held strictly liable for defects. Plaintiffs, on behalf of themselves and the Class Members, seek indemnity from 3M for damages Plaintiffs have suffered and will suffer as a consequence of the defectively designed Lava Ultimate.

Count 6: Strict Liability – Design Defect

101. Plaintiffs re-allege and incorporate by reference all the above allegations as if fully set forth herein. Plaintiffs bring this claim on behalf of the Class Members.

102. Lava Ultimate was not reasonably safe or effective for its intended uses and were defective as described herein with respect to their design. As previously stated, Lava Ultimate’s design defects include, but are not limited to:

- a. Failure to achieve a sufficient bond strength;
- b. Failure to maintain sufficient bond strength; and
- c. Flex in the material that contributed to the reduction in bond strength.

103. As a direct and proximate result of the aforementioned defects in Lava Ultimate, Plaintiffs and Class Members have experienced and continues to experience financial or economic loss, as well as damage to their professional reputation and business practice.

104. 3M is strictly liable to Plaintiffs and the Class Members for designing, manufacturing, marketing, labeling, packaging and selling defective products.

Count 7: Strict Liability – Manufacturing Defect:

105. Plaintiffs re-allege and incorporate by reference all the above allegations as if fully set forth herein. Plaintiffs bring this claim on behalf of the Class Members.

106. Lava Ultimate was not reasonably safe for its intended uses and was defective as described herein as a matter of law with respect to their manufacture, in that they deviated materially from 3M's design and manufacturing specifications in such a manner as to pose unreasonable risks of failure requiring replacement.

107. Lava Ultimate reached Plaintiffs and the Class without substantial change or adjustment to their function upon being applied.

108. 3M knew or should have known of the manufacturing defects and the risk of failure that exceeded the benefits associated with Lava Ultimate.

109. Furthermore, Lava Ultimate and its related defects presented an unreasonable risk beyond what the ordinary consumer would reasonably expect.

110. Lava Ultimate is inherently dangerous for its intended use due to manufacturing defects and improper functioning. 3M is therefore strictly liable.

111. As a direct and proximate result of the defects in Lava Ultimate, Plaintiffs and the Class Members have experienced and continue to experience financial or economic loss, as well as damage to their professional reputation and business practice.

112. 3M is strictly liable to Plaintiffs and the Class Members for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

Count 8: Strict Liability – Failure to Warn

113. Plaintiffs incorporates by reference all preceding paragraphs of this Complaint as if fully set forth herein.

114. 3M's Lava Ultimate was not reasonably safe for its intended uses and was defective as described herein as a matter of law due to their lack of appropriate and

necessary warnings. Specifically, 3M did not provide sufficient or adequate warnings regarding, among other subjects, the product's propensity to debond.

115. As a direct and proximate result of the defective Lava Ultimate, Plaintiffs and the Class Members have experienced and continue to experience financial or economic loss, as well as damage to their professional reputation and business practice.

116. 3M is strictly liable to Plaintiffs and Class Members for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

Count 9: Unjust Enrichment

117. Plaintiffs re-allege and incorporate by reference all the above allegations as if fully set forth herein. Plaintiffs bring this claim on behalf of the Class Members.

118. 3M has benefitted from selling at an unjust profit defective Lava Ultimate products, whose value was artificially inflated by 3M's concealment of the high rates of debonds when used in crowns. Accordingly, Plaintiffs and the Class overpaid for Lava Ultimate.

119. 3M has received and retained unjust benefits from the Plaintiffs and class, and an inequity has resulted.

120. It is inequitable and unconscionable for 3M to retain these benefits. Because 3M concealed its fraud and deception, Plaintiffs and the class were not aware of the true facts concerning Lava Ultimate and certainly did not benefit from 3M's misconduct.

121. 3M knowingly accepted the unjust benefits of its fraudulent conduct and other misconduct.

122. As a result of 3M's misconduct, the amount of its unjust enrichment should be disgorged and returned to Plaintiffs and the class in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class Members, respectfully request as follows:

A. An order determining this action may be maintained as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to members of the Class;

B. An order designating Plaintiffs as the named representatives of the class, and the appointment of the undersigned as Class Counsel;

C. Judgement temporarily and permanently enjoining 3M from continuing the unlawful, deceptive, fraudulent, harmful and unfair business conduct and practices alleged in this complaint;

D. Judgement temporarily and permanently enjoining 3M from continuing to sell, market or distribute Lava products for use in crowns;

E. Judgement against 3M in favor of Plaintiffs and Class Members;

F. Any and all applicable statutory and civil penalties;

G. An order requiring 3M to pay both pre- and post-judgment interest on any amounts awarded;

H. An award of costs and attorneys' fees, as allowed by law;

- I. Leave to amend this Complaint to conform to the evidence produced at trial;
and
- J. Such other or further relief as the Court may deem appropriate, just, and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs requests a jury trial on all matters so triable.

Dated: May 16, 2016

Respectfully submitted,

GUSTAFSON GLUEK PLLC

s/Daniel C. Hedlund

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CIVIL DOCKET FOR CASE #: 1:16-cv-21490-JAL

Lazaro Fernandez, DDS, P.A. v. 3M Company
Assigned to: Judge Joan A. Lenard
Cause: 28:1332 Diversity-Other Contract

Date Filed: 04/27/2016
Jury Demand: Plaintiff
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

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V.

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3M Company

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Date Filed	#	Docket Text
04/27/2016	<u>1</u>	COMPLAINT against All Defendants. Filing fees \$ 400.00 receipt number 113C-8687341, filed by Lazaro Fernandez, DDS, P.A.. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summon(s))(Lewis, Jordan) (Entered: 04/27/2016)
04/27/2016	2	Judge Assignment to Judge Joan A. Lenard (ar2) (Entered: 04/27/2016)
04/27/2016	<u>3</u>	Clerks Notice pursuant to 28 USC 636(c). Parties are hereby notified that the U.S. Magistrate Judge Jonathan Goodman is available to handle any or all proceedings in this case. If agreed, parties should complete and file the attached form. (ar2) (Entered: 04/27/2016)
04/27/2016	<u>4</u>	Summons Issued as to 3M Company. (ar2) (Entered: 04/27/2016)
04/27/2016	5	ORDER REGARDING FORMATTING OF FILINGS. The body of all filings shall be (1) double-spaced (with the exception of block quotations), and (2) printed in 12-point or larger type in an easily-readable font. Consistent with Local Rule 5.1, footnotes may be single-spaced but must be at least 12-point font. Furthermore, all filings are limited to forty-six (46) lines of footnoted material, which is equal to one full page of single-spaced, 12-point font text. All page limitations set forth by the Local Rules shall be observed. Non-compliant filings may be stricken from the record. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 4/27/2016. (gie) (Entered: 04/27/2016)

05/19/2016	<u>7</u>	Unopposed MOTION for Extension of Time to File Response/Reply/Answer <i>the Complaint</i> by 3M Company. (Romance, Mark) (Entered: 05/19/2016)
05/19/2016	8	ORDER GRANTING <u>7</u> Defendant's Unopposed Motion for Extension of Time to File Response to Complaint. Defendant shall have until and including June 3, 2016 to respond to the Complaint. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 5/19/2016. (gie) (Entered: 05/19/2016)
05/19/2016	<u>9</u>	Unopposed MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for WENDY J. WILDUNG. Filing Fee \$ 75.00 Receipt # 113C-8751657 by 3M Company. Responses due by 6/6/2016 (Romance, Mark) (Entered: 05/19/2016)
05/19/2016	<u>10</u>	Unopposed MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for AARON P. KNOLL. Filing Fee \$ 75.00 Receipt # 113C-8751668 by 3M Company. Responses due by 6/6/2016 (Romance, Mark) (Entered: 05/19/2016)
05/23/2016	<u>11</u>	ORDER granting <u>9</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Attorney(s) Wendy J. Wildung. Signed by Judge Joan A. Lenard on 5/23/2016. (dp) (Entered: 05/23/2016)
05/23/2016	<u>12</u>	ORDER granting <u>10</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Attorney(s) Aaron P. Knoll. Signed by Judge Joan A. Lenard on 05/23/16. (dp) (Entered: 05/23/2016)
06/03/2016	<u>13</u>	MOTION TO DISMISS <u>1</u> Complaint FOR FAILURE TO STATE A CLAIM by 3M Company. Responses due by 6/20/2016 (Attachments: # <u>1</u> Declaration) (Romance, Mark) (Entered: 06/03/2016)
06/03/2016	<u>14</u>	Certificate of Interested Parties/Corporate Disclosure Statement - NONE disclosed by 3M Company (Romance, Mark) (Entered: 06/03/2016)

PACER Service Center			
Transaction Receipt			
06/06/2016 16:24:01			
PACER Login:	Larry62308:3112693:0	Client Code:	3M
Description:	Docket Report	Search Criteria:	1:16-cv-21490-JAL
Billable Pages:	2	Cost:	0.20

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Lazaro Fernandez, DDS, P.A. d/b/a
Fernandez Dental Center-Miami Lakes,
Individually and on behalf of
all those similarly situated,

Case No.

Plaintiff,

JURY TRIAL DEMANDED

v.

3M Company,

Defendant.

_____ /

CLASS ACTION COMPLAINT

Plaintiff Fernandez Dental Office, on behalf of itself and all other persons and entities similarly situated, brings this action against defendant 3M Company and, to the best of its knowledge, information and belief, based on an inquiry reasonable under the circumstances, alleges as follows:

NATURE OF THE ACTION

1. This case arises from 3M Company's sale of defective dental blocks and misleading advertising regarding such blocks. The product, which 3M has named "Lava Ultimate CAD/CAM Restorative," is made from resin material filled with ceramic particles and provides the "tooth" for replacement crowns. 3M has marketed this product in tandem with separately manufactured machines, commonly referred to as "mills," such as the Planmeca PlanScan, which is manufactured by Planmeca, that can precisely cut the dental blocks into crowns. When the Lava block and the mill are used together, a dentist can, according to 3M's marketing – through software and hardware – capture a digital image of a patient's mouth and build a replacement crown in the dental office in a single visit.

2. 3M's Lava blocks are primarily used by dentists as replacement crowns.

Although the blocks are also marketed for use by dentists for inlays, onlays, and veneers, it is generally not cost-effective to use the blocks and mills for anything other than crowns.

3. On June 12, 2015, 3M issued an "Urgent Medical Device Correction," announcing that it was "voluntarily removing the crown indication from the list of indications for use of Lava Ultimate materials." The reason, according to the announcement, is that the crowns were "debonding" – or coming loose – at an unacceptable rate.

4. Due to 3M's announcement of this defect in its Lava blocks, which poses a choking hazard to patients in whom crowns made of Lava blocks have been implanted, Plaintiff has had to replace those crowns in its patients with crowns made of a different material.

5. While 3M has offered to buy back the unused blocks from dentists like Plaintiff at \$30 a unit, it has refused, despite due request, to reimburse Plaintiff (or class members) for the cost of replacing the defective blocks already implanted in patients' mouths.

6. Accordingly, Plaintiff brings this action on its own behalf and on behalf all those similarly situated, to seek a full and fair recovery attributable to 3M's defective product and misleading representations.

JURISDICTION AND VENUE

7. This Court has diversity jurisdiction over this action under 28 U.S.C. § 1332(d) because the amount in controversy for the class exceeds \$5,000,000, exclusive of interest and costs, there are more than 100 class members, and a member of the class is a

citizen of a State different than 3M. This Court also has subject matter jurisdiction over Plaintiff's Lanham Act claim, pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over Plaintiff's additional state law claims, pursuant to 28 U.S.C. § 1367.

8. The Court has personal jurisdiction over 3M because 3M conducts substantial business in this District, and some of the actions giving rise to this complaint took place in this District. 3M operates, conducts, engages in and carries on business ventures within this state and within this Court's jurisdiction; and it manufactures products that are used and/or consumed within this state, and within this Court's jurisdiction, in the ordinary course of business.

9. Venue is proper in this District under 28 U.S.C. § 1391(a) because, among other things, a substantial part of the events or omissions giving rise to the claims occurred in this District, and caused harm to class members residing in this District.

PARTIES

10. Plaintiff Lazaro Fernandez, DDS, P.A., d/b/a Fernandez Dental Center-Miami Lakes Fernandez Dental Office, is a Florida limited liability company with branches in Flagler, Miami Lakes and Kendall, all located within this judicial district. Fernandez Dental is a citizen of the state of Florida, as its principal place of business, its members, employees and patients all reside in Florida.

11. Defendant 3M Company is a citizen of the state of Minnesota. Its principal headquarters is located there, and the product at issue was developed in and marketed from Minnesota. 3M employs about 35,000 people domestically and about 90,000 persons worldwide. The company's net income worldwide in 2014 was \$4.956 billion. 3M is divided into 27 business units, managed under five business groups: Consumer, Electronics &

Energy, Health Care, Industrial, and Safety & Graphics. In this Complaint, “3M” refers to the named defendant and all other related, successor, predecessor, and subsidiary entities to which these allegations pertain.

FACTS

12. In its promotional and sales material, 3M advertised its Lava blocks for use by dentists as replacement crowns. It asserted that dentists “can offer your patients affordable, high quality same-day digital restorations with unmatched fit, feel and finish.” Based on these representations, 3M has sold more than 1 million blocks in the United States.

13. In 2014, Plaintiff purchased a Planmeca PlanScan mill. The decision to purchase a PlanScan was prompted by the joint 3M-Planmeca advertising generated by 3M concerning the efficacy of its Lava Ultimate CAD/CAM Restorative dental blocks, which 3M represented were superior to competing dental blocks in quality, ease of use and expense.

14. Both the mill and the Lava blocks were purchased through a third-party distributor of dental products, with 3M’s knowledge. Neither 3M nor Planmeca sell directly to dental clinics, dentists or orthodontists.

15. Plaintiff implanted approximately 700 of the 3M blocks in Plaintiff’s patients over the course of the following year, all before 3M issued its notice regarding the defect in the Lava blocks.

16. At least 200 of the 700 Lava-block crowns that Plaintiff implanted in its patients’ mouths have already debonded. Plaintiff has therefore replaced debonded 3M crowns with crowns that require far more extensive labor and time to create. Plaintiff cannot charge patients for this service and expense. 3M has refused Plaintiff’s request to

compensate Plaintiff for this time and expense, or to provide substitute blocks to cover Plaintiff's replacement of the defective implanted blocks. The expense of replacing the block, including the cost of a replacement block, exceeds \$300 per patient.

17. Given 3M's admission that its blocks are defective, Plaintiff expects that, in the near future, it will need to replace all the crowns made from 3M blocks that it previously implanted in other patients. The debonding of so many crowns so soon after they were implanted has damaged Plaintiff's business reputation.

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23 on behalf of itself and a class of similarly situated individuals and entities.

19. The requirements of Rule 23(a), (b)(2) and (b)(3) are each met with respect to the class defined below.

20. Plaintiff seeks to represent the following class:

All persons and/or entities within the United States who purchased the Lava Ultimate CAD/CAM Restorative, implanted them as crowns in patients, and have replaced them, or will replace them, at no or reduced cost to their patients.

21. **Numerosity.** Members of the class number more than 100, and are so numerous that individual joinder of all members is impracticable.

22. **Existence of Common Questions of Law and Fact.** Common questions of law and fact exist as to all members of the class. These include, but are not limited to: whether the 3M Lava Ultimate CAD/CAM Restorative blocks are defective such that they breached 3M's express and implied warranties; whether 3M was negligent in misrepresenting the properties of the 3M Lava Ultimate CAD/CAM Restorative blocks; and

whether 3M should be required to cover the costs associated with the removal and/or replacement of the implanted blocks.

23. Typicality. The claims of Plaintiff are typical of the claims of the class, as Plaintiff and the members of class have purchased the defective 3M blocks, implanted the blocks as crowns in their patients, and have been harmed in the same manner by 3M's conduct.

24. Adequacy. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff's interests do not conflict with the interests of the members of the class. Further, Plaintiff has retained counsel competent and experienced in complex class action litigation. Plaintiff and its counsel are committed to vigorously prosecuting this action.

25. Predominance and Superiority. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual class members is impracticable. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members. Likewise, because the damages suffered by each individual class member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual class members to redress the wrongs done to each of them individually, and the burden imposed on the judicial system would be enormous.

26. The prosecution of separate actions by the individual class members would also create a risk of inconsistent or varying adjudications for individual class members, which would establish incompatible standards of conduct for 3M. The conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each class member.

Further, Plaintiff anticipates no difficulty in the management of this litigation as a class action.

27. For all of the foregoing reasons, a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

**COUNT 1
BREACH OF IMPLIED WARRANTY**

28. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 27 as if fully set forth herein.

29. This Count is brought on behalf of Plaintiff and the class.

30. 3M impliedly warranted that the Lava Ultimate CAD/CAM Restorative blocks, which 3M invented, designed, manufactured and/or sold, were merchantable and fit for the ordinary purposes for which they were intended to be used, and were not otherwise injurious to consumers and purchasers. The ordinary purpose for which the Lava Ultimate CAD/CAM Restorative blocks are used is as an implant to replace a tooth.

31. 3M breached its implied warranty of merchantability when it invented, designed, manufactured, distributed and/or sold Lava Ultimate CAD/CAM Restorative blocks in an unsafe and unmerchantable condition. The blocks debond, meaning they come loose, at an unacceptable rate.

32. Plaintiff and each of the members of the class have had sufficient direct dealings with either 3M or its agent distributor to establish privity of contract between 3M, on the one hand, and Plaintiff and each of the members of the class, on the other hand. Notwithstanding, privity is not required because Plaintiff and each of the members of the class are the intended beneficiaries of 3M's warranties. 3M's distributors were not

intended to be the ultimate consumers of the Lava blocks, and have no rights under the warranty agreements provided by 3M or implied by law. 3M's express warranties were designed for and intended to benefit the consumers only. Plaintiff and the members of the class were the intended purchasers of the Lava Ultimate CAD/CAM Restorative blocks.

33. Plaintiff and the members of the class have suffered damages caused by 3M's breach of the implied warranty of merchantability and are entitled to recover compensatory damages, including but not limited to the cost of repairs and diminution in value.

**COUNT 2
NEGLIGENT MISREPRESENTATION**

34. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 27 as if fully set forth herein.

35. This count is brought on behalf of Plaintiff and the class.

36. 3M supplied false information to Plaintiff and the class regarding Lava Ultimate CAD/CAM Restorative Blocks. This false information included uniform representations that Lava Ultimate CAD/CAM restorative blocks could be used with mills like the Planmeca PlanScan to create a safe implant to replace a tooth that would not debond at an unacceptable rate.

37. 3M supplied this information to induce Plaintiff and the class to purchase Lava Ultimate CAD/CAM Restorative Blocks and mills like the Planmeca PlanScan.

38. 3M knew or should have known that the information it supplied regarding Lava Ultimate CAD/CAM Restorative blocks and mills like the Planmeca PlanScan would induce Plaintiff and the class to purchase Lava Ultimate CAD/CAM Restorative Blocks and

mills like the Planmeca PlanScan, and 3M knew or in the exercise of reasonable care should have known that this information was false and/or misleading.

39. 3M was negligent in obtaining and/or communicating false information regarding Lava Ultimate CAD/CAM Restorative Blocks and mills like the Planmeca PlanScan to Plaintiff and the class.

40. Plaintiff and the class relied on 3M's uniform misrepresentations regarding the Lava Ultimate CAD/CAM Restorative Blocks and mills like the Planmeca PlanScan to their detriment by purchasing Lava Ultimate CAD/CAM Restorative Blocks and mills like the Planmeca PlanScan and using these products for crown implants for their patients.

41. Plaintiff and the class were justified in this reliance on the false information supplied by 3M.

42. As a direct and proximate result of 3M's wrongful conduct, Plaintiff and the class sustained damages that include but are not limited to the cost of replacing the Lava Ultimate CAD/CAM Restorative Block implants in their patients, and business reputation injuries.

COUNT 3

Violation of the Lanham Act, 15 U.S.C. §§ 1501 *et seq.*

43. Plaintiff repeats and re-alleges the allegations in paragraphs 1 through 27 as if fully set forth herein.

44. The Lanham Act, 15 U.S.C. § 1125(a), entitled "False designation of origin, false descriptions, and dilution forbidden," provides in pertinent part:

Civil action

(1) Any person who, on or in connection with any goods or services, or

any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

45. 3M used in commerce false or misleading descriptions of fact, and false or misleading representations and omissions of fact, which misrepresented, and were likely to cause and did cause confusion and mistake and deceived regarding the nature, characteristics, and qualities of the Lava Ultimate CAD/CAM Restorative Blocks, including the uniform representations that Lava Ultimate CAD/CAM restorative blocks could be used with the mills like the Planmeca PlanScan to create a safe implant to replace a tooth that would not debond at an unacceptable rate.

46. 3M's misleading representations of fact relating to the Lava Ultimate CAD/CAM Restorative Blocks caused actual injury to Plaintiff and class members.

47. 3M's statements were made in commercial advertising or in promotion of its Lava Ultimate CAD/CAM Restorative Blocks.

48. 3M had an economic motivation for making its statements, as it was incentivized to sell as many the Lava Ultimate CAD/CAM Restorative Blocks as possible.

49. 3M's misleading statements had a material effect on the purchasing decisions of Plaintiff and class members. These omitted and concealed facts were material because they would be relied on by a reasonable business purchasing blocks for replacement crowns, and because they directly impact the value of the blocks purchased and services provided by Plaintiff and class members. Whether a manufacturer's products are safe and reliable, and whether that manufacturer stands behind its products, are material concerns to a purchaser. Plaintiff and Class members trusted 3M not to sell restorative blocks that were defective, unsafe, and did not work as advertised.

50. 3M's statements were widely distributed, which is, at least, sufficient to constitute promotion within the dental industry.

51. Thus, 3M's misleading representations and statements are and/or were material and the direct cause of the injuries herein described.

52. 3M's products travel or traveled in interstate commerce.

53. Plaintiff and the other Class members have and continue to be damaged and injured by 3M's material misrepresentations and as a result of the false and misleading statements. Plaintiff and other Class members were injured and continue to suffer injury to, among other things, their business reputations and sales, as they are required to replace the defective crowns without charging patients, all of which results in lower revenues and profits, as well as lost business and increased expenses. These economic injuries are likely to continue in the future.

54. 3M's acts constitute the use of false descriptions and false representations in interstate commerce in violation of § 43(a) of the Lanham Act and entitle Plaintiff,

individually and on behalf of the other Class members, to recover damages, disgorgement of Defendants' profits, the costs of this action, and attorney's fees..

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on its own behalf and on behalf of the classes, respectfully requests judgment against 3M Company:

- (a) Certifying the class and appointing Plaintiff and its counsel to represent the class;
- (b) Awarding damages that include, but are not limited to, the cost of replacing the defective Lava Ultimate CAD/CAM Restorative implants and compensating Plaintiff and the class for injuring their business reputations;
- (c) Awarding pre-judgment and post-judgment interest;
- (d) Awarding attorneys' fees and costs; and
- (e) Awarding such other relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury of all issues triable.

Dated: April 27, 2016

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