IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ALICE CAMPBELL

Plaintiff,

Civil Action No.:

3M COMPANY,
a Delaware corporation,

Defendant.

COMES NOW, Plaintiff, ALICE CAMPBELL ("Ms. Campbell" or "Plaintiff") and files this, her Original Complaint, against Defendant 3M Company and would respectfully show the following:

I. INTRODUCTION

1. This is a product liability personal injury case stemming from the design, manufacture, marketing, and maintenance of the Bair Hugger Forced Air Warming device ("Bair Hugger FAW"). As a direct result of the use of Bair Hugger FAW during her hip replacement surgery, Plaintiff suffered grievous harm, incurred significant medical bills, and continues to suffer to this day.

2. Defendant knew about the risks the Bair Hugger FAW posed to patients, particularly patients such as Plaintiff undergoing implantation surgeries. Despite this knowledge, which Defendant enjoyed for a least the last fifteen years, no attempt has been made to redesign their product or warn healthcare providers of the risks inherent

in using a Bair Hugger FAW in an implantation surgery. In fact, Defendant has taken every step to conceal and discredit any scientific studies which might undermine their sales.

II. PARTIES

3. Plaintiff is a citizen of the State of Maryland and resides in Baltimore County, Maryland.

4. Defendant 3M is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Maplewood, Minnesota. 3M is engaged in the business of researching, developing, designing, licensing, manufacturing, distributing, supplying, selling, marketing and introducing into interstate commerce, either directly or indirectly through third parties or related entities, its products, including the Bair Hugger.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332, as complete diversity exists between Plaintiff and Defendant, and the amount in controversy exceeds $75,000.

7. Defendant are subject to *in personam* jurisdiction in this court, and venue is proper within this district pursuant to 28 U.S.C. §1391, as a substantial number of the events, actions, or omissions giving rise to the Plaintiff's claims occurred in this district. At all times relevant to this matter, Defendant 3M COMPANY ("3M") conducted

substantial business in this district. Defendant did (and does) business within the State of Minnesota and have had substantial, continuous, and systematic contacts with the State of Minnesota, have consented to jurisdiction in the State Minnesota, and/or committed a tort in whole or in part in the State of Minnesota, and many other states, against thousands of Plaintiffs, including Plaintiff herein, as more fully set forth below. On information and belief, Defendant also marketed, advertised, and sold the Defective Devices in the district of Minnesota, and many other states, made material omissions and representations in each of these districts, and breached warranties in these districts.

IV. FACTUAL BACKGROUND

8. On December 22, 2011, Plaintiff Campbell underwent surgery at Sinai Hospital for the purpose of receiving a hip replacement.

9. During her surgery, Plaintiff's anesthesiologist used a Bair Hugger Forced Air Warming device (hereinafter "Bair Hugger FAW") on her.

10. Plaintiff sustained a periprosthetic infection during her hip replacement surgery due to the introduction of contaminants unto her open surgical site by the Bair Hugger FAW.

11. Plaintiff's infection contained Staphylococcus aureus (STAPH) which was introduced as a result of the Bair Hugger FAW.

12. Between 2012 and 2015, Plaintiff Campbell underwent several surgeries to clean the hip due to the infection.

13. Plaintiff Campbell continued to be treated for the infection.

14. The Bair Hugger FAW is designed, manufactured, and marketed by Defendant 3M Company.

15. More than 50,000 Bair Hugger FAW units are currently in use across the country.

16. The Bair Hugger FAW consists of a portable heater/blower connected by a flexible hose to a disposable blanket that is positioned over (or in some cases under) surgical patients. The system warms patients during surgery by blowing hot air on a patients' exposed skin.

17. The hot air produced by Bair Hugger FAW accumulates under the surgical drape covering the patient and escapes from under the surgical drape below the level of the surgical table or at the head end of the surgical table. This escaped air creates air flow currents that flow against the downward air flow of the operating room. As this warmed air rises, it deposits bacteria from the floor of the surgical room into the surgical site.

18. At some point between 2002 and 2009 Defendant reduced the efficiency of the air filtration of Bair Hugger FAW blowers. This action reduced the safety of such blowers.

19. As a result of these actions by Defendant, the internal airflow paths of Bair Hugger FAW blowers become contaminated with pathogens.

20. The pathogens contaminating the internal airflow paths of Bair Hugger FAW blowers incubate and proliferate therein.

21. These pathogens are then expelled from the interior of the Bair Hugger FAW blower by the outward airflow, travel through the hose into the disposable blanket and escape into the operating room.

22. Defendant has been aware of the pathogenic contamination of the airflow paths of Bair Hugger FAW blowers since at least 2009.

23. Defendant has actively and aggressively marketed the Bair Hugger FAW as safe in both general and orthopedic surgeries despite their knowledge to the contrary.

24. In a communication to the Food and Drug Administration ("FDA") in September 2000, Defendant represented that the Bair Hugger FAW's filtration system meets HEPA ("High Efficiency Particulate Air") Standards. This statement was false at the time Defendant made it and it remains false today. To meet HEPA standards, an air filter must be capable of removing 99.97% of all particles 0.3 microns or large. The filter of the Bair Hugger FAW, which is marketed as HEPA compliant, is only capable of removing les that 65% of all such particles. When Defendant made these misrepresentations, Defendant had actual knowledge of their falsity.

25. In June of 1997, in a letter to the FDA, Defendant admitted that "air blown intraoperatively across the surgical wound may result in airborne contamination."

Defendant

countered this flaw in their products by misrepresenting to the FDA that the risk of contamination by air flow is obviated because all "Bair Hugger Blankets designed for use in the operating room feature a tape barrier which prevent (sic) air from migrating toward the surgical site." This ameliorative statement by Defendant is false on a number of fronts. First, a number of Bair Hugger blankets marketed as safe for use in surgeries do not utilize a taped edge at all. Instead, those blankets blow contaminated air directly toward the surgical field. Second, the statement that the taped barrier would contain the contaminated air is false because it ignores the fact that the heated air from the Bair Hugger FAW rises against the general downward airflow of the operating theatre. The presence of a tape edge would do nothing to prevent the fact that the Bair Hugger FAW facilitates the movement of pathogens from the floor of the operating room to the surgical site. When Defendant made these misrepresentations, they had actual knowledge of their falsity.

26. In their website, www.FAWFact.com (last visited October 19, 2015), Defendant make the following misrepresentations:

a. Contamination mobilized by the convection currents generated by the Bair Hugger FAW cannot reach the surgical site because "[a]ir velocity within the operating theatre is may times stronger than that of the forced-air warming blanket;

b. "The air emerging from the blanket is directed downward by the surgical drape and emerges under the operating room table and is drawn away through the laminar system's return air inlets;"

c. "It's been suggested that warm air rising above the Bair Hugger blanket could interfere with the downward laminar flow toward the surgical site. It should be noted that the Bair Hugger warming unit delivers less than one percent of the airflow of a laminar flow system and the momentum of the downward air is far greater than the upward momentum imparted to the air above the blanket."

27. The statements in the preceding paragraph are false and intentionally misleading. Through these statements, Defendant disguised the fact that the issue is not the strength of the airflow in a laminar system but the heat of the air generated by the Bair Hugger FAW. The cold air circulated with the operating room, having a higher density than the air heated by the Bair Hugger FAW, falls to the floor which forces the contaminated air at the floor of the operating room, now warmed by the waste heat from the Bair Hugger FAW, to rise into the sterile field and the surgical site. The heated air rises, it is not "drawn away" as Defendant's posit in their advertisement.

28. In an advertisement that appeared in multiple medical publications as early as 2010, available online at http://www.fawfacts.com/ asset/zn062p/ (last visited October 19, 2015), Defendant made the following false and deliberately misleading claims:

> "While simple logic makes it clear that forced air warming has no impact on laminar conditions, science also supports this. A forced air warming blanket delivers less than one percent of the airflow of a laminar flow system and therefore is unable to affect laminar flow ventilation systems."

As published scientific research, before and after this statement, has demonstrated, this statement is untrue. The exhaust generated by the Bair Hugger FAW creates convective airflow patterns that do disrupt the laminar flow of the operating theater.

29. In a communication that appeared in *Healthcare Purchasing News* in July of 2012, Defendant's public relations and communications specialist Greta Deutsch stated "some conductive-warming manufacturers have alleged that forced-air warming increases bacterial contamination of operating rooms or interrupts laminar airflow. These accusations have no factual basis." Again, this statement ignores numerous published studies documenting the adverse effects the Bair Hugger FAW has on laminar airflow.

30. The publication of numerous peer-reviewed studies documenting and revealing the critical safety shortcomings of the Bair Hugger FAW should have prompted Defendant to redesign or discontinue their product. Instead, those criticisms only caused Defendant to amplify their efforts to champion the Bair Hugger FAW. These publications include, but are not limited to, the following:

a. Albrecht M, Leaper D et al. Forced-air warming blowers: An evaluation of filtration adequacy and airborne contamination emissions in the operating room. *Am JInfect Control* 2011;39:321-8;

b. Leaper D et al. Forced-air warming: a source of airborne contamination in the operating room? *Orthopedic Rev.* 2009;1(2):e28;

c. McGovern et al. Forced-air warming and ultra-clean ventilation do not mix. *J Bone and Joint Surg-Br.* 2011;93(11):1537-1544;

d. Legg et al. Do forced air patient-warming devices disrupt unidirectional downward airflow? *J Bone and Joint Surg-Br.* 2012;94-B:254-6;

e. Belani et al. Patient warming excess heat: The effects on orthopedic operating room ventilation performance. *Anesthesia & Analgesia* 2012 (prepublication on-line) 2013;117(2):406-411; and

f. Dasari et al. Effect of forced air warming on the performance of operating theatre laminar flow ventilation. *Anaesthesia* 2012;67:244-249.

31. Separately and in conjunction with each other, the net effects of these misrepresentations was to mislead healthcare providers about the safety of the Bair Hugger FAW for use in surgical procedures. Defendant were aware of the falsity of their misrepresentations at the time those misrepresentations were authored.

32. As each study confirms the dangers the Bair Hugger FAW poses to surgical patients, Defendant do nothing to alter the design of the machine nor do they make any effort to warn physicians. To do so would be against their closely guarded economic interests.

33. As a direct and proximate result of the failure of Defendant's Bair Hugger FAW to maintain the sterility of the surgical area and the Defendant's wrongful conduct in designing, manufacturing, and marketing this dangerous product, Plaintiff sustained and continues to suffer economic damages (including medical and hospital expenses), severe and permanent injuries, pain, suffering, and emotional distress. Plaintiff has sustained and will continue to sustain damages in an amount to be proven at trial.

V. CAUSES OF ACTION

COUNT I - NEGLIGENCE

34. Plaintiff represents and incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

35. Defendant owed Plaintiff a duty to exercise reasonable care when designing, manufacturing, marketing, advertising, distributing, and selling Bair Hugger FAW.

36. Defendant failed to exercise due care under the circumstances and therefore breached this duty in the following nonexclusive ways:

a. Failing to properly and thoroughly test Bair Hugger FAW before releasing the device to market;

b. Failing to properly and thoroughly analyze the data resulting from the pre-market tests of the Bair Hugger FAW;

c. Failing to conduct sufficient post-market testing and surveillance of the Bair Hugger FAW;

d. Designing, manufacturing, marketing, advertising, distributing, and selling the Bair Hugger FAW to consumers, including Plaintiff, without an adequate warning of the significant and dangerous risks of the Bair Hugger FAW and without proper instructions to avoid the harm which could foreseeably occur as a result of using the device;

e. Failing to exercise due care when advertising and promoting the Bair Hugger FAW; and

f. Negligently continuing to manufacture, market, advertise, and distribute the Bair Hugger FAW after Defendant knew or should have known of its adverse effects.

39. Plaintiff was injured as a direct and proximate result of Defendant's actions, omissions, and misrepresentations. Plaintiff has incurred and will continue to incur expenses as a result of using the Bair Hugger FAW.

COUNT II - STRICT LIABILITY

40. Plaintiff repeats and incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

41. Defendant, or entities under its control, were responsible for the design, manufacture, assembly, marketing, selling and/or distribution of the Bair Hugger FAW used in Plaintiff's surgery.

42. The propensity of the Bair Hugger FAW to cause convention currents that disrupt the generally downward airflow of the operating room makes the Bair Hugger FAW dangerous when used in the way it is ordinarily used and is dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchased it, with the ordinary knowledge common to the community as to its characteristics.

43. In the alternative, the propensity of the Bair Hugger FAW's internal air flow passageways, including its non-HEPA compliant filter, to become contaminated with pathogens makes the Bair Hugger FAW dangerous when used in the way it is ordinarily used and is dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchased it, with the ordinary knowledge common to the community as to its characteristics.

44. The Bair Hugger FAW system used on Plaintiff by her physicians was defective and unsafe for its intended purposes at the time it left the control of Defendant and at the time it was sold.

45. Specifically, Bair Hugger FAW is defective in its design of formulation in that it is not reasonably fit, suitable or safe for its intended purpose and/or its

foreseeable risks exceed the benefits associated with its design.

46. Plaintiff and her physicians were unaware of the significant hazards and defects in Bair Hugger FAW. The Bair Hugger FAW system was unreasonably dangerous and/or not reasonably safe in that it was more dangerous than would be reasonably contemplated by the ordinary patient or physician. During the period that Plaintiff and her physicians used the Bair Hugger FAW system, it was used in a manner that was intended by Defendant. At the time Plaintiff was warmed by the Bair Hugger FAW system, it was represented to be safe and free from latent defects.

A. DEFECTIVE WARNING

47. Plaintiff repeats and incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

48. Defendant researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold and otherwise released into the stream of commerce Bair Hugger FAW and in doing so, directly advertised or marketed the product to the FDA, health care professionals, and consumers, or persons responsible for consumers, and therefore had a duty to warn of the risks associated with the use of Bair Hugger FAW.

49. Defendant failed to adequately warn health care professionals and the public, including Plaintiff and her physician, of the true risks of Bair Hugger FAW, including that Bair Hugger FAW would circulate contaminated air in the operating

room and that the vented heat from Bair Hugger FAW would mobilize floor air contaminated with pathogens into the surgical site, causing deep joint infections, and requiring further treatment, including surgery and/or amputation.

50. Defendant failed to provide timely and reasonable warnings regarding the safety and efficacy of Bair Hugger. Had they done so, proper warnings would have been heeded and no health care professional, including Plaintiff's physicians, would have used Bair Hugger FAW and no patient, including Plaintiff, would have allowed use of Bair Hugger FAW.

51. Bair Hugger FAW, which was researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold and otherwise released into the stream of commerce by Defendant, was defective due to inadequate post-marketing warnings and/or instructions because Defendant failed to provide adequate warnings to health care professionals and the consuming public, including Plaintiff, and continue to aggressively promote Bair Hugger FAW.

52. Defendant failed to perform or otherwise facilitate adequate testing, failed to reveal or concealed testing and research data, or selectively and misleadingly revealed or analyzed testing and research data.

53. The defective warnings or instructions provided in association with the Bair Hugger FAW constitute a producing cause of Plaintiff's injuries.

54. The failure to provide timely and reasonable warnings, instructions, and

information regarding Bair Hugger FAW to Plaintiff and/or her physician rendered the Bair Hugger unreasonably dangerous. As a direct result of Defendant's conduct, Plaintiff has suffered and continues to suffer serious and permanent non-economic and economic injuries. Defendant are liable to Plaintiff in an amount to be determined at trial.

B. DEFECTIVE DESIGN AND MANUFACTURE

55. Plaintiff repeats and incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

56. While engaged in the manufacture and sale of the Bair Hugger, Defendant manufactured and sold Bair Hugger FAW to consumers within the stream of commerce. Defendant intended and expected that the Bair Hugger so introduced and passed on in the course of trade would ultimately reach a consumer or user in the condition in which it was originally sold.

57. The design of the Bair Hugger FAWs and/or its component parts, make the Bair Hugger FAW unreasonably dangerous, taking into consideration the utility of the device and the risk involved in its use.

58. At all times relevant to this action, an economically and technologically feasible safer alternative design existed, which in reasonable medical probability:

a. Would have prevented or significantly reduced the risk of Plaintiff's infection and subsequent amputation; and

b. Would not have impaired the utility of the device.

59. Specifically, Bair Hugger FAW is defective in its design of formulation in that it is not reasonably fit, suitable or safe for its intended purpose and/or its foreseeable risks exceed the benefits associated with its design. Bair Hugger FAW is defective in design in that it lacks efficacy, poses a greater likelihood to injury and is more dangerous than other available devices indicated for the same conditions and uses.

60. If the design defects were known at the time of manufacture, a reasonable person would have concluded that the utility of Bair Hugger FAW did not outweigh its risks.

61. The defective condition of the Bair Hugger FAW system rendered it unreasonably dangerous and/or not reasonably safe and the Bair Hugger FAW system was in this defective condition at the time it left the hands of the Defendant. The Bair Hugger FAW system was expected to and did reach Plaintiff and her physicians without substantial change in the condition in which it was designed, manufactured, labeled, sold, distributed, marketed, promoted, supplied, and otherwise released into the stream of commerce.

62. Defendant are strictly liable to Plaintiff for designing, manufacturing, and placing into the stream of commerce the Bair Hugger FAW system, which was unreasonably dangerous for its reasonably foreseeable uses because of its design defects.

63. Defendant knew or should have known of the danger associated with the use of the Bair Hugger FAW, as well as the defective nature of Bair Hugger FAW, but have continued to design, manufacture, sell, distribute, market, promote, and/or supply Bair Hugger FAW so as to maximize sales and profits at the expense of the public health and safety, in conscious disregard of the foreseeable harm caused by Bair Hugger FAW.

64. The defective design and manufacture of the Bair Hugger FAW was a cause of Plaintiff's injuries.

65. As a direct result of Defendant's conduct, Plaintiff has suffered and continues to suffer serious and permanent non-economic and economic injuries and Defendant are liable to Plaintiff in an amount to be determined at trial.

COUNT III—BREACH OF EXPRESS WARRANTY

66. Plaintiff repeats and incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

67. Defendant advertised, labeled, marketed and promoted Bair Hugger FAW, representing the quality to health care professionals, the FDA, Plaintiff, and the public in such a way as to induce its purchase or use, thereby making an express warranty that Bair Hugger FAW would conform to the representations. More specifically, Defendant represented that Bair Hugger FAW was safe and effective for use by individuals such as Plaintiff or that it was safe and effective to use during Plaintiff's surgery.

68. The representations, as set forth above, contained or constituted affirmations of fact or promises made by Defendant to the buyer that related to the goods and became part of the basis of the bargain, creating an express warranty that the goods would conform to the affirmations of fact or promises.

69. The Bair Hugger FAW system did not conform to the representations made by Defendant in that the Bair Hugger FAW system was not safe and effective, was not safe and effective for use by individuals such as Plaintiff, and/or was not safe and effective to treat individuals such as Plaintiff.

70. At all relevant times, the Bair Hugger FAW system was used on Plaintiff by her physicians for the purpose and in the manner intended by Defendant.

71. Plaintiff and Plaintiff's physicians, by the use of reasonable care, could not have discovered the breached warranty and realized its danger.

72. The breach of warranty was a proximate cause in bringing about Plaintiff's injuries.

73. As direct result of Defendant's conduct, Plaintiff has suffered and continues to suffer serious and permanent non-economic and economic injuries and Defendant are liable to Plaintiff in an amount to be determined at trial.

COUNT IV—BREACH OF IMPLIED WARRANTY

74. Plaintiff repeats and incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

75. The Bair Hugger FAW system was not reasonably fit for the ordinary purposes for which such goods are used and did not meet the expectations for the performance of the product when used in the customary, usual and reasonably foreseeable manner. Nor was the Bair Hugger FAW system minimally safe for its intended purposes.

76. At all relevant times, the Bair Hugger FAW system was used on Plaintiffs by her physicians for the purpose and in the manner intended by Defendant.

77. Plaintiff and Plaintiff's physician, by the use of reasonable care, would not have discovered the breached warranty and realized its danger.

78. Defendant's breach of the implied warranty was a proximate cause in bringing about Plaintiff's injuries.

79. As direct results of Defendant's conduct, Plaintiff has suffered and continues to suffer serious and permanent non-economic and economic injuries and Defendant are liable to Plaintiff in an amount to be determined at trial.

COUNT V—NEGLIGENT MISREPRESENTATION

80. Plaintiff repeats and incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

81. Defendant made misrepresentations with respect to Bair Hugger FAW including, but not limited to, the following particulars:

a. Defendant represented through the labeling, advertising, marketing materials, seminar presentations, publications, notice

letters, and regulatory submissions that Bair Hugger FAW has been tested and found to be safe and effective for the warming of patients during orthopedic implant surgery; and

b. Defendant represented that Bair Hugger FAW was safer than other patient warming systems.

90. Defendant did not exercise reasonable care or competence in obtaining or communicating the information to the public regarding the characteristics and qualities of Bair Hugger FAW.

91. Plaintiff and her physicians did, in fact, rely upon the representations.

92. Plaintiff and her physicians justifiably relied upon the representations.

93. Defendant's misrepresentations evidence their callous, reckless, and willful indifference to the health, safety, and welfare of their consumers, including Plaintiff.

94. Plaintiff was injured as a direct and proximate result of Defendant's actions, omissions, and misrepresentations.

95. Plaintiff has incurred and will continue to incur expenses as a result of using the Bair Hugger FAW system.

COUNT VI—FRAUDULENT MISREPRESENTATION

96. Plaintiff repeats and incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

97. Defendant made fraudulent misrepresentations with respect to Bair Hugger FAW including, but not limited to, the following particulars:

a. Defendant represented through the labeling, advertising, marketing materials, seminar presentations, publications, notice letters, and regulatory submissions that Bair Hugger FAW had been tested and found to be safe and effective for warming patients undergoing orthopedic implant surgery; and

b. Defendant represented that Bair Hugger FAW was safe and safer than other alternative patient warming devices.

98. Defendant knew that their representations were false, yet they willfully, wantonly, and recklessly disregarded their obligation to provide truthful representations regarding the safety and risks of Bair Hugger FAW to consumers, including Plaintiff, and the medical community.

99. The representations were made by Defendant with the intent that doctors and patients, including Plaintiff, rely upon them.

100. Defendant's representations were made with the intent of defrauding and deceiving Plaintiff, other consumers, and the medical community to induce and encourage the sale of Bair Hugger FAW.

101. Plaintiff and her physicians did in fact rely upon the representations.

102. Defendant's fraudulent representations evidence their callous, reckless, and willful indifference to the health, safety, and welfare of consumers, including Plaintiff.

103. Plaintiff was injured as a direct and proximate result of Defendant's actions, omissions, and misrepresentations. Plaintiff has incurred and will continue to incur expenses as a result of using Bair Hugger FAW.

104. Defendant acted with oppression, fraud, and malice towards Plaintiff,

who accordingly requests that the trier of fact, in the exercise of its sound discretion, award additional damages for the sake of example and for the purpose of punishing Defendant for their conduct, in an amount sufficiently large to be an example to others and to deter these Defendant and others from engaging in similar conduct in the future.

COUNT VII—FRAUDULENT CONCEALMENT

105. Plaintiff repeats and incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

106. Defendant fraudulently concealed information with respect to Bair Hugger FAW including, but not limited to, the following particulars:

a. Defendant represented through the labeling, advertising, marketing materials, seminar presentations, publications, notice letters, and regulatory submissions that Bair Hugger FAW was safe and fraudulently withheld and concealed information about the substantial risk of using Bair Hugger FAW; and

b. Defendant represented that Bair Hugger FAW was safe and safer than other alternative systems and fraudulently concealed information that demonstrated that Bair Hugger FAW was not safer than alternatives available on the market.

107. Defendant had sole access to material facts concerning the dangers and unreasonable risks of Bair Hugger FAW.

108. The concealment of information by Defendant about the risks of Bair Hugger FAW was intentional, and the representations made by Defendant were known by Defendant to be false.

109. The concealment of information and the misrepresentations about Bair Hugger FAW were made by Defendant with the intent that doctors and

patients, including Plaintiff and her doctors, rely upon them.

110. Plaintiff and her physicians relied upon the representations and were unaware of the substantial risks of Bair Hugger FAW which Defendant concealed from the public, including Plaintiff and her physicians.

111. Plaintiff was injured as a direct and proximate result of Defendant's actions omissions, and misrepresentations. Plaintiff has incurred and will continue to incur expenses as a result of using the Bair Hugger FAW system.

112. Defendant acted with oppression, fraud, and malice towards Plaintiff, who accordingly requests that the trier of fact, in the exercise of its sound discretion, award additional damages for the sake of example and for the purpose of punishing Defendant for their conduct, in an amount sufficiently large to be an example to others and to deter these Defendant and others from engaging in similar conduct in the future.

VI. DAMAGES

113. Plaintiff repeats and incorporates by reference all other paragraphs of this Complaint as if fully set forth herein.

114. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff was caused to suffer personal injuries and has incurred the following damages:

a. Reasonable medical care and expenses in the past;

b. Reasonable and necessary medical care and expenses that will, in all reasonable probability, be incurred in the future;

c. Physical pain and suffering in the past;

d. Physical pain and suffering in the future;

e. Physical impairment in the past;

f. Physical impairment that , in all reasonable probability, will be suffered in the future;

g. Loss of earnings in the past;

h. Loss of earning capacity that, in all reasonable probability, will be incurred in the future;

i. Disfigurement in the past;

j. Disfigurement in the future;

k. Mental anguish in the past;

l. Mental anguish in the future;

m. Cost of medical monitoring and prevention in the future;

n. Reasonable and necessary attorney's fees in prosecuting this action; and

115. Plaintiff seeks all elements of said damages permitted under law from the Defendant in an amount that Plaintiff would show he is entitled to at the time of trial.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court;

exemplary damages, and such other and further relief to which Plaintiff may be entitled at law or in equity.

A JURY TRIAL IS DEMANDED ON ALL ISSUES.

Respectfully submitted,

MESHBESHER & SPENCE. LTD

Dated: November 6, 2015

/s/ Genevieve M. Zimmerman
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JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
Alice Campbell

(b) County of Residence of First Listed Plaintiff Baltimore
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Genevieve M. Zimmerman, Esq. Ashleigh E. Raso, Esq.
Meshbesher & Spence, Ltd.
1616 Park Avenue Minneapolis, MN (612) 339-9121

DEFENDANTS
3M COMPANY,a Delaware corporation.

County of Residence of First Listed Defendant Ramsey
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. 1332

Brief description of cause:
Health Care/Pharmaceutical Personal Injury Product Liability

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $ 75,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE _____ DOCKET NUMBER MDL 2666 (15-cv-03139)

DATE 11/06/2015

SIGNATURE OF ATTORNEY OF RECORD Genevieve Zimmerman

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____