IN THE DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION

HEATHER WHEELER,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	Case No.: 2:16-cv-131
3M COMPANY, and	)	
ARIZANT HEALTHCARE, INC.,	)	
	)	
Defendants.	)	
	)	

COMPLAINT

Plaintiff, Heather Wheeler, by and through Plaintiff's undersigned attorneys brings this Complaint against Defendants 3M COMPANY and ARIZANT HEALTHCARE, INC. (hereinafter referred to collectively as "Defendants"), and alleges as follows:

This is an action for injuries and damages relating to Defendants' design, development, testing, assembling, manufacturing, packaging, promoting, marketing, distribution, supplying and/or selling the defective device sold under the trade names of Bair Hugger Forced Air Warming device (hereinafter "Bair Hugger", or "Defective Device").

PARTIES

1. Plaintiff, Heather Wheeler, is a resident of Bristol, Tennessee, located in Sullivan County.
2. Defendant 3M is a corporation organized and existing under the laws of the State of Delaware, doing business in the State of Tennessee 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.

3. Defendant 3M engages or has engaged in business in this State and may be served by serving its registered agent, CT Corporation System, at its registered address, 800 S Gay St, Ste 2021, Knoxville, TN 37929.
4. Defendant Arizant is a corporation organized and existing under the laws of the State of Delaware, Arizant conducts business throughout the United States, including the State of Tennessee and is a wholly owned subsidiary of Defendant 3M.
5. Arizant engages or has engaged in business in this State and may be served by serving its registered agent, CT Corporation System, at its registered address, 800 S Gay St, Ste 2021, Knoxville, TN 37929.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332, as complete diversity exists between Plaintiffs and Defendants, and the amount in controversy exceeds $75,000. Defendants are subject to *in personam* jurisdiction in this court, and venue is proper within this district pursuant to 28 U.S.C. §1391(a)(2), 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, Defendants 3M COMPANY ("3M") and ARIZANT HEALTHCARE, INC. ("Arizant") (collectively the "Defendants") conducted substantial business in this district. Defendants did (and do) business within the State of Tennessee and have had substantial, continuous, and systematic contacts with the State of Tennessee, have consented to jurisdiction in the Tennessee, and/or committed a tort in

whole or in part in the State of Tennessee and many other states, against thousands of Plaintiffs, including Plaintiff, Heather Wheeler herein, as more fully set forth below. On information and belief, Defendants also marketed, advertised, and sold the Defective Devices in the Eastern District of Tennessee, and many other states, made material omissions and representations in each of these districts, and breached warranties in these districts.

SUMMARY OF THE CASE

7. The Defendants, directly or through their agents, apparent agents, servants or employees designed, manufactured, marketed, advertised, distributed and sold the Bair Hugger.
8. As a result of the defective design of the Bair Hugger, Heather Wheeler, has suffered and may continue to suffer severe and permanent personal injuries.
9. On June 3, 2015, the Bair Hugger was used on Plaintiff, Heather Wheeler, during the course of her pyloric valve surgery.
10. Because the Bair Hugger was used, contaminants were introduced to Plaintiff, Heather Wheeler's open surgical wound, resulting in a Methicillin-resistant Staphylococcus aureus (MRSA) infection.
11. Due to the infection, Plaintiff, Heather Wheeler, needed additional surgical procedures to clean the infected area after her pyloric valve surgery, and Plaintiff, Heather Wheeler, continues to suffer substantial damages, including but not limited to impaired mobility, making the simple movement of walking a challenge.
12. Plaintiff, Heather Wheeler, now suffers and will continue to suffer from permanent damages as a result of the Bair Hugger-induced infections.

13. The Defendants concealed and continue to conceal their knowledge of the Bair Hugger's unreasonably dangerous risks from Plaintiff, Heather Wheeler, other consumers, and the medical community.
14. The Defendants failed to conduct adequate and sufficient post-marketing surveillance after they began marketing, advertising, distributing and selling the Bair Hugger.
15. As a result of the Defendants' actions and inactions, Plaintiff, Heather Wheeler, was injured due to the use of the Bair Hugger, which has caused and will continue to cause Plaintiff, Heather Wheeler, various injuries and damages. Accordingly, Plaintiffs seeks compensatory damages.

FACTUAL BACKGROUND

16. More than 50,000 Bair Hugger units are currently in use across the country.
17. The Bair Hugger 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 patient's exposed skin.
18. The hot air produced by Bair Hugger 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 airflow currents that flow against the downward airflow of the operating room. As this warmed air rises, it deposits bacteria from the floor of the surgical room into the surgical site.
19. At some point between 2002 and 2009 the Defendants reduced the efficiency of the air filtration of Bair Hugger blowers. This action reduced the safety of such blowers.
20. As a result of these actions by the Defendants, the internal airflow paths of Bair Hugger blowers become contaminated with pathogens.

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

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

23. The Defendants have been aware of the pathogenic contamination of the airflow paths of Bair Hugger blowers since at least 2009.

24. The Defendants have actively and aggressively marketed the Bair Hugger as safe in both general and orthopedic surgeries despite their knowledge to the contrary.

25. In a communication to the Food and Drug Administration ("FDA") in September 2000, Defendants represented that the Bair Hugger's filtration system meets HEPA ("High Efficiency Particulate Air") Standards. This statement was false at the time Defendants 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 larger. The filter of the Bair Hugger, which is marketed as HEPA compliant, is only capable of removing less than 65% of all such particles. When the Defendants made these representations, they had actual knowledge of their falsity.

26. In June of 1997, in a letter to the FDA, the Defendants admitted that, "air blown intra-operatively across the surgical wound may result in airborne contamination." The Defendants addressed this flaw in their products by making further misrepresentations to the FDA when they stated 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." That statement by the

Defendants was and is patently false. 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. Also, 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 rises against the general downward airflow of the operating theatre. The presence of a tape edge does nothing to prevent the Bair Hugger from facilitating the movement of pathogens from the floor of the operating room to the surgical site. When the Defendants made these representations, they had actual knowledge of their falsity.

27. In their website, www.fawfacts.com/laminar_airflow/ (last visited March 11, 2016), the Defendants make the following misrepresentations:

    a. Contamination mobilized by the convection currents generated by the Bair Hugger cannot reach the surgical site because "[a]ir velocity within the operating room is many times stronger than that of a 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.

28. The statements in the preceding paragraph are false and intentionally misleading. Through these statements, the Defendants disguise 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. The cold air circulated with the operating room, having a higher density than the air heated by the Bair Hugger, 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, to rise into the sterile field and the surgical site. The heated air rises, and is not "drawn away" as the Defendants falsely claim in their advertisement.

29. In an advertisement that appeared in multiple medical publications as early as 2010, available online at http://www.fawfacts.com/_asset/zn062p/AJIC.pdf (last visited March 11, 2016), the Defendants made the following false and deliberately misleading claims:

    a. "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."

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

31. In a communication that appeared in *Healthcare Purchasing News* in July of 2012, the Defendants' 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 has on laminar airflow.

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

    a. Albrecht M, et al. Forced-air warming blowers: An evaluation of filtration adequacy and airborne contamination emissions in the operating room. *Am J Infect Control* 2010; 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, P.D., et al. Forced-air warming and ultra-clean ventilation do not mix. *J Bone and Joint Surg-Br*. 2011; 93-B (11):1537-1544;

    d. Legg, A. 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, K., 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;

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

33. The effect of these misrepresentations was to mislead healthcare providers about the safety of the Bair Hugger for use in surgical procedures. The Defendants were aware of the falsity of their misrepresentations at the time those misrepresentations were authored.

34. Rather than alter the design of their product or warn physicians of the dangers associated with the Bair Hugger, as numerous studies confirm, the Defendants have chosen to "double down" on their efforts to promote their defective product.

35. Plaintiff, Heather Wheeler's, physicians relied upon the above representations and advertisements to Plaintiff, Heather Wheeler's, detriment. Any reasonable and competent physician would not use a Bair Hugger in an orthopedic implant surgery if they were fully apprised of the dangers and risks associated with doing so. However, through misrepresentations to the public, the medical community, and the FDA, the Defendants actively and knowingly concealed the propensity of these devices to cause infection in orthopedic implant surgeries.

36. As a result of the failure of the Defendants' Bair Hugger to maintain the sterility of the surgical area and the Defendants' wrongful conduct in designing, manufacturing, and marketing this defective product, Plaintiff, Heather Wheeler, and Plaintiff's physician were unaware, and could not have reasonably known or have learned through reasonable diligence, that Plaintiff, Heather Wheeler, had been exposed to the risks identified in this complaint, and that those risks were the direct and proximate result of the Defendants' acts, omissions and misrepresentations.

COUNT 1

NEGLIGENCE

37. Plaintiffs re-allege each and every allegation of this Complaint in each of the foregoing paragraphs inclusive with the same force and effect as if fully set forth herein.

38. The Defendants owed Plaintiff, Heather Wheeler, a duty to exercise reasonable care when designing, manufacturing, marketing, advertising, distributing, and selling the Bair Hugger.

39. The Defendants failed to exercise due care under the circumstances and therefore breached this duty by:

a. Failing to properly and thoroughly test the Bair Hugger 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;

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

d. Designing, manufacturing, marketing, advertising, distributing, and selling the Bair Hugger to consumers, including Plaintiff, Heather Wheeler, without an adequate warning of the significant and dangerous risks of the Bair Hugger 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; and

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

40. As a direct and proximate result of the Defendants' actions, omissions and misrepresentations, Plaintiff, Heather Wheeler suffered a MRSA infection, requiring additional surgical procedures to clean the infected area. Consequently, Plaintiff, Heather Wheeler, has suffered damages and incurred and will continue to incur medical expenses

as a result of using the Bair Hugger. Plaintiff, Heather Wheeler, has also suffered and will continue to suffer diminished capacity for the enjoyment of life, a diminished quality of life, increased risk of premature death, aggravation of preexisting condition and activation of latent conditions, and other losses and damages. Plaintiff, Heather Wheeler's, direct medical losses and costs include care for hospitalization, physician care, monitoring, treatment, medications and supplies. Plaintiff, Heather Wheeler, has incurred and will continue to incur mental and physical pain and suffering and loss of wages and wage earning capacity.

41. The Defendants' conduct as described above was committed with knowing, conscious, wanton, willful and deliberate disregard for the value of human life and the rights and safety of consumers such as Plaintiff, Heather Wheeler. Defendants' conduct warrants, if allowed by the Court upon motion, an award of punitive damages against Defendants in an amount appropriate to punish the Defendants and deter them from similar conduct in the future.

COUNT II

VIOLATION OF THE TENNESSEE CONSUMER PROTECTION ACT

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

43. The conduct described above and throughout this Complaint took place within the State of Tennessee and constitutes unfair and deceptive trade practices in violation of the Tennessee Consumer Protection Act of 1977, *Tenn. Code Ann.* § 47-18-101; 47-18-104.

44. The Tennessee Consumer Protection Act of 1977 applies to the claims of the Plaintiff because the conduct which constitutes violations of the act by the Defendants occurred within the State of Tennessee.

45. Under the Tennessee Consumer Protection Act of 1977, no supplier shall engage in any deceptive act or practice in connection with a consumer transaction and deceptive acts include, but are not limited to the willful failure to state a material fact, or the willful concealment, suppression or omission of a material fact.

46. Defendants violated the Tennessee Consumer Protection Act of 1977 by engaging in acts and practices by willfully failing and refusing to timely report information that reasonably suggested the Bair Hugger, like that used on Plaintiff, may cause or contribute to death or serious injury when used in implantation surgeries.

47. Defendants violated the Tennessee Consumer Protection Act of 1977, among other ways, through the following:

    a. Representing knowingly or with reason to know that the Bair Hugger has approval, characteristics, uses, or benefits that it does not have;

    b. Representing knowingly or with reason to know that the Bair Hugger and its filtration system is of a particular standard, qualify, or grade when it differs materially from that representation;

    c. Representing knowingly or with reason to know that the Bair Hugger has uses, benefits, or characteristics that have been otherwise proven incorrect;

    d. Falsely stating, knowingly or with reason to know, that services or repairs are not needed.

48. The Defendants' violations of the Tennessee Consumer Protection Act of 1977, whether individually or in combination, caused or contributed to cause Plaintiff's injuries and damages as forth herein.

49. Under the Tennessee Consumer Protection Act of 1977, Plaintiff is entitled to recover her actual damages and entitled to recover her reasonable attorneys' fees from the Defendants, along with equitable relief prayed for herein in this Complaint.

COUNT III

STRICT LIABILITY

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

51. Defendants, or entities under their control, were responsible for the design, manufacture, assembly, marketing, selling and/or distribution of the Bair Hugger used in Plaintiff's surgery.

52. The propensity of the Bair Hugger to cause convention currents that disrupt the generally downward airflow of the operating room makes the Bair Hugger 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.

53. In the alternative, the propensity of the Bair Hugger's internal air flow passageways, including its non-HEPA compliant filter, to become contaminated with pathogens makes the Bair Hugger 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.

54. The Bair Hugger system used on Plaintiff by his physicians was defective and unsafe for its intended purposes at the time it left the control of Defendants and at the time it was sold.

55. Plaintiff therefore invokes the doctrine of strict liability in Section 402A, Restatement of the Law of Torts, 2d, and as adopted by the State of Tennessee by allowing liability for a product that is either unreasonably dangerous or defective, rather than requiring that the product meet both tests.

56. Specifically, Bair Hugger 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.

57. Plaintiff and her physicians were unaware of the significant hazards and defects in Bair Hugger. The Bair Hugger 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 his physicians used the Bair Hugger system, it was used in a manner that was intended by Defendants. At the time Plaintiff was warmed by the Bair Hugger system, it was represented to be safe and free from latent defects.

A. DEFECTIVE WARNING

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

59. Defendants researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold and otherwise released into the stream of commerce Bair Hugger 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.

60. Defendants failed to adequately warn health care professionals and the public, including Plaintiff and her physician, of the true risks of Bair Hugger, including that Bair Hugger would circulate contaminated air in the operating room and that the vented heat from Bair Hugger would mobilize floor air contaminated with pathogens into the surgical site, causing deep joint infections, and requiring further treatment, including surgery and/or amputation.

61. Defendants 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 and no patient, including Plaintiff, would have allowed use of Bair Hugger.

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

63. Defendants 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.

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

65. The failure to provide timely and reasonable warnings, instructions, and information regarding Bair Hugger to Plaintiff and/or his physician rendered the Bair Hugger unreasonably dangerous. As a direct result of Defendants' conduct, Plaintiff has suffered and continues to suffer serious and permanent non-economic and economic injuries. Defendants are liable to Plaintiff in an amount to be determined at trial.

B. DEFECTIVE DESIGN AND MANUFACTURE

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

67. While engaged in the manufacture and sale of the Bair Hugger, Defendants manufactured and sold Bair Hugger to consumers within the stream of commerce. Defendants 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.

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

69. 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.

70. Specifically, Bair Hugger 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 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.

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

72. The defective condition of the Bair Hugger system rendered it unreasonably dangerous and/or not reasonably safe and the Bair Hugger system was in this defective condition at the time it left the hands of the Defendants. The Bair Hugger system was expected to and did reach Plaintiff and his 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.

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

74. Defendants knew or should have known of the danger associated with the use of the Bair Hugger, as well as the defective nature of Bair Hugger, but have continued to design, manufacture, sell, distribute, market, promote, and/or supply Bair Hugger 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.

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

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

COUNT IV

BREACH OF EXPRESS WARRANTY

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

78. Defendants advertised, labeled, marketed and promoted Bair Hugger, 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 would conform to the representations. More specifically, Defendants represented that Bair Hugger was safe and effective for use by individuals such as Plaintiff or that it was safe and effective to use during Plaintiff's surgery.

79. The representations, as set forth above, contained or constituted affirmations of fact or promises made by Defendants 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.

80. The Bair Hugger system did not conform to the representations made by Defendants in that the Bair Hugger 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.

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

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

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

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

COUNT V

BREACH OF IMPLIED WARRANTY

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

86. The Bair Hugger 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 system minimally safe for its intended purposes.

87. At all relevant times, the Bair Hugger system was used on Plaintiff's by his physicians for the purpose and in the manner intended by Defendants.

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

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

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

COUNT VI

NEGLIGENT MISREPRESENTATION

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

92. Defendants made misrepresentations with respect to Bair Hugger including, but not limited to, the following particulars:

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

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

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

94. Plaintiff and his physicians did, in fact, rely upon the representations.

95. Plaintiff and his physicians justifiably relied upon the representations.

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

97. Plaintiff was injured as a direct and proximate result of Defendants' actions, omissions, and misrepresentations.

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

COUNT VII

FRAUDULENT MISREPRESENTATION

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

100. Defendants made fraudulent misrepresentations with respect to Bair Hugger including, but not limited to, the following particulars:

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

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

101. Defendants 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 to consumers, including Plaintiff, and the medical community.

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

103. Defendants' 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.

104. Plaintiff and his physicians did in fact rely upon the representations.

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

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

107. Defendants 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 Defendants for their conduct, in an amount sufficiently large to be an example to others and to deter these Defendants and others from engaging in similar conduct in the future.

COUNT VIII

FRAUDULENT CONCEALMENT

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

109. Defendants fraudulently concealed information with respect to Bair Hugger including, but not limited to, the following particulars:

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

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

110. Defendants had sole access to material facts concerning the dangers and unreasonable risks of Bair Hugger.

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

112. The concealment of information and the misrepresentations about Bair Hugger were made by Defendants with the intent that doctors and patients, including Plaintiff and his doctors, rely upon them.

113. Plaintiff and his physicians relied upon the representations and were unaware of the substantial risks of Bair Hugger which Defendants concealed from the public, including Plaintiff and his physicians.

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

115. Defendants 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 Defendants for their conduct, in an amount sufficiently large to be an example to others and to deter these Defendants and others from engaging in similar conduct in the future.

COUNT IX

PUNITIVE DAMAGES

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

117. Defendants' acts or omissions described above, when viewed from the standpoint of the Defendants at the time of the act or omission, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff and the community at large.

118. Defendants' acts or omissions, as described herein, were performed with a realization of the imminence of danger and were performed with reckless disregard or complete indifference to the probable result.

119. Defendants had actual, subjective awareness of the risks involved in the above described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff and the community at large.

120. Based on the facts stated herein, Plaintiff requests that punitive damages be awarded to Plaintiff from Defendants.

DAMAGES

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

122. 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. For the costs of litigating this case, including attorneys' fees; and

o. Punitive damages.

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF RESPECTFULLY REQUESTS:

1. That service of process issue forth upon Defendant(s) requiring them to answer this Complaint within the time required by law.

2. For compensatory damages, in an amount to adequately compensate Heather Wheeler for all the injuries and damages sustained, but not to exceed $5,000,000;

3. For all general and special damages caused by the alleged conduct of Defendants;

4. For punitive damages sufficient to punish Defendants, but not to exceed $10,000,000;

5. For the costs of litigating this case, including attorneys' fees; and

6. For all other relief to which Plaintiff are entitled by law;

PLAINTIFF DEMANDS A JURY TRIAL.

Respectfully Submitted,

LAW OFFICES OF TONY SEATON, PLLC

/s/ Robert Bates
Robert Bates, TN BPR #30067
Attorney for Plaintiff
118 E Watauga Ave
Johnson City, TN 37601
(423) 282-1041

JS 44 (Rev. 11/15)

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
HEATHER WHEELER,

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Law Offices of Tony Seaton, PLLC
118 E. Watauga Ave.
Johnson City, TN 37601

DEFENDANTS
3M COMPANY, and ARIZANT HEALTHCARE, INC.,

County of Residence of First Listed Defendant
(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

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

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
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 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

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

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

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:
Product liability for defective product

VII. REQUESTED IN COMPLAINT:
❒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.
DEMAND $ 5,000,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY *(See instructions):*
JUDGE Joan N. Ericksen DOCKET NUMBER MDL No. 2666

DATE 05/19/2016
SIGNATURE OF ATTORNEY OF RECORD /s/ Robert Bates

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

for the

Eastern District of Tennessee

HEATHER WHEELER,

Plaintiff(s)

v.

3M COMPANY, and
ARIZANT HEALTHCARE, INC.,

Defendant(s)

Civil Action No. 2:16-cv-131

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* 3M Company
c/o Registered Agent, CT Corporation System
800 S. Gay Street, Suite 2021
Knoxville, TN 37929

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Robert Bates
Law Offices of Tony Seaton, PLLC
118 East Watauga Ave.
Johnson City, TN 37601

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Eastern District of Tennessee

HEATHER WHEELER,

Plaintiff(s)

v.

3M COMPANY, and
ARIZANT HEALTHCARE, INC.,

Defendant(s)

Civil Action No. 2:16-CV-131

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Arizant Healthcare, Inc.
c/o Registered Agent, CT Corporation System
800 S. Gay Street, Suite 2021
Knoxville, TN 37929

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Robert Bates
Law Offices of Tony Seaton, PLLC
118 East Watauga Ave.
Johnson City, TN 37601

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

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This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc: