

Case 4:19-cv-00247-BCW Document 1 Filed 03/29/19 Page 1 of 20

COMPLAINT

Plaintiff Bret Holder (“Plaintiff”) brings this Complaint against Defendants 3M Company (“3M”) and Aearo Technologies, LLC (“Aearo”) and in support alleges as follows:

1. This is a products liability action based on Defendants’ design, manufacture, marketing, and sale of defective earplugs. Plaintiff used Defendants’ dual-ended Combat Arms Earplugs – Version 2 (“Combat Arms Earplugs”) and, as a result of the earplugs’ defective condition, now suffers from hearing loss and/or tinnitus. Defendants knew the earplugs were defective prior to selling them because they falsified test results and misrepresented their performance specifications to qualify for multi-million dollar per-year contracts with the United States Government.

2. To protect this country’s armed forces, the United States Military supplies servicemembers with, among other things, earplugs. The Government obtains those earplugs from private companies and its standards for Military-use earplugs are, by necessity, demanding. Servicemembers must be able to perform their duties, in training and in combat, and so must be able to hear spoken commands and other important noises while also being protected from the damaging impulse sounds of explosions and gunfire.

3. In the early 2000s, Aearo Technologies LLC developed its dual-ended Combat Arms Earplugs for sale to the Military. Each end of these earplugs, one yellow and one olive,



could be inserted into the ear canal. The olive end was closed and meant to block all sound like a traditional earplug. The yellow end was open, to a small extent, to allow the wearer to hear certain sounds, such as spoken commands, while still offering protection from damaging impulse sounds.

4. But the dual-ended Combat Arms Earplugs were defectively designed. They could not be securely fit into the ear canal because, when one end was placed into the ear, the largest ring, or flange, of the opposite end would get in the way. As a result, the earplugs failed to prevent damage to servicemembers' hearing.

5. Aearo was aware of this flaw. After the earplugs initially failed performance testing, Aearo invented a work-around. The work-around involved folding back the offending flange to get it out of the way so the earplug could be inserted far enough into the ear. Only with the work-around could the earplugs perform well enough in testing to meet the Military's exacting standards. Aearo used testing data obtained using the work-around to justify its statements to the Military about the earplugs' performance and the similar statements on the products' packaging.

6. But the work-around was only used during the flawed testing. The folded-back flange did not stay folded back when in use by the user.

7. Aearo sold thousands, perhaps millions, of these earplugs to the Military. Each pair came with written instructions. Those instructions did not reveal the fold-back work-around. A servicemember who used the earplugs as instructed therefore thought that his or her hearing was being protected when, in fact, it was not.

8. Aearo started selling these earplugs to the Government in 2003 and continued to sell the earplugs for Military use for over a decade. In 2008, 3M Company acquired Aearo and continued selling the defective earplugs until discontinuing the model in 2015. Hundreds of thousands, perhaps millions, of servicemembers have had their hearing damaged because of

Aearo's and 3M's conduct.

9. Plaintiff Holder is one of those servicemembers. Plaintiff used the dual-ended Combat Arms Earplugs during Plaintiff's years of service to this country. As a result, Plaintiff suffers from hearing impairment. Plaintiff now sues to recover damages for those injuries.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1332(a)(1) because the amount in controversy exceeds \$75,000 and the parties are diverse.

11. Venue is proper a substantial part of the events or omissions giving rise to the claims at issue occurred in this judicial district, and Defendants are subject to the Court's personal jurisdiction with respect to this action

PARTIES

12. Plaintiff Holder is a resident and citizen of Missouri.

13. Defendant 3M is a corporation organized under Delaware law with its principal place of business in St. Paul, Minnesota. It also has a place of business located in Nevada, Missouri, which sits in this judicial district.

14. Defendant Aearo is a Delaware limited liability company with its principal place of business in Indianapolis, Indiana. On April 1, 2008, a subsidiary of 3M bought the stock of Aearo Holding Corporation, the parent of Aearo, for \$1.2 billion. Upon information and belief, Aearo Technologies LLC is owned 100% by Aearo LLC, a Delaware limited liability company. Aearo LLC is 100% owned by Aearo Intermediate LLC, a Delaware limited liability company. Aearo Intermediate LLC is 100% owned by Aearo Holdings LLC, a Delaware limited liability company. Aearo Holdings LLC is 100% owned by 3M Occupational Safety LLC, a Delaware limited liability company. 3M Occupational Safety LLC is 100% owned by 3M Company, which, as noted above,

is a Delaware corporation with its principal place of business in Minnesota. Thus, for diversity purposes, Aearo Technologies LLC is also a citizen of Delaware and Minnesota.

FACTS

Aearo Falsified Testing Data

15. Aearo has been in the business of energy-control technology for decades and claimed to be the global market leader in hearing and eye protection.

16. Aearo began testing the dual-ended Combat Arms Earplugs around January 2000. Aearo conducted the testing in its own laboratory, not an independent laboratory, which violated ANSI S3.19-1974 testing protocols.

17. The purpose of the testing was to ascertain the Noise Reduction Rating (“NRR”) score of the earplugs. NRR is a measure of the effectiveness of hearing protection devices. The higher the NRR, the greater the noise reduction.

18. Aearo selected ten individuals to serve as test subjects, some of whom were its employees. Aearo personnel monitored the testing.

19. Aearo’s original plan was to test the NRR of both the yellow, or open end, and the olive, or closed end, of the earplugs and to do so with ten test subjects.

20. Aearo’s goal was to achieve an NRR score of 22 for the olive end and 0 for the yellow end.

21. After testing just 8 subjects with the olive end, Aearo stopped the test. The first 8 tests of the olive end suggested an NRR of 10.9, which was inadequate and below Aearo’s expectations and Government standards.

22. Aearo tested the yellow end and arrived at a -2 NRR, indicating that the earplug amplified sound, rather than blocked it out. Aearo’s later packaging misrepresented this value as

0.

23. In connection with the January 2000 test, Aearo discovered a design flaw — that the largest ring or flange of the outward facing end of the earplug prevented the inward facing end from fitting securely in the ear. At this point, Aearo developed the work-around, folding the flange back.

24. Having discovered this work-around, Aearo retested the olive end of the earplugs a month later. Using the work-around, Aearo achieved the desired NRR scores.

Aearo Received Military Contract for the Earplugs

25. In 2003, the Government began buying Aearo's dual-ended Combat Arms Earplugs for Military use. From that time until 2015, Aearo or 3M was the exclusive supplier of this type of earplug to the Military.

26. The Government's purchases were subject to Indefinite Quantity Contracts awarded to Aearo and 3M via a request-for-proposal process.

27. As part of that process, Aearo and 3M continually certified the earplugs complied with contract requirements, specifically the Salient Characteristics of Medical Procurement Item Description of Solicitation No. SP0200-06-R-4202.

28. Aearo and 3M knew that the earplugs did not meet those requirements and, therefore, knew that their certifications were false.

29. One of those requirements, number 2.4, was that "The ear plugs shall be free from all defects that detract from their appearance or impair their serviceability."

30. Another requirement, number 2.5, was that "Illustrated instructions explaining the proper use and handling of the ear plugs shall be supplied with each unit."

31. Aearo and 3M did not satisfy these requirements because the earplugs were

defectively designed and the instructions the companies supplied did not explain the defect or the need to, and how to, fold back the opposing flange.

32. Because the defect was imperceptible to the wearer, Defendants' design defect went undetected for more than a decade by the United States Military and those who wore them.

33. In total, the United States Military purchased enough Combat Arms Earplugs to supply one to every servicemember deployed each year.

34. Hearing damage is now the largest ongoing medical cost the Military incurs each year.

3M Settled False Claims Act Case for Millions of Dollars

35. 3M continued selling the earplugs for Military use until they were discontinued in 2015, exposing thousands of servicemembers to the risk of hearing loss and tinnitus.

36. While 3M eventually stopped manufacturing and selling the Combat Arms Earplugs, 3M never recalled the product.

37. Roughly three years after discontinuing the Combat Arms Earplugs, 3M paid \$9.1 million to the United States to settle allegations that it sold the dual-ended Combat Arms Earplugs without disclosing the known defects.

38. Until this settlement revealed 3M and Aearo's misconduct, injured servicemembers had no reason to suspect their hearing loss or tinnitus was caused by 3M and Aearo's misconduct. To the contrary, servicemembers wore the Combat Arms Earplugs believing the earplugs *protected* them from hearing impairment.

Plaintiff Used the Combat Arms Earplugs and Now Suffers from Serious Hearing Impairment

39. Plaintiff volunteered for the Military. At the time, Plaintiff did not suffer from tinnitus or hearing loss.

40. Plaintiff used the dual-ended Combat Arms Earplugs when firing weapons and around other loud noises while serving in the Military, including periods of service in Iraq and Afghanistan.

41. The defective Combat Arms Earplugs did not work, and 3M and Aero *knew* they would not work.

42. As a result, Plaintiff now suffers from significant hearing loss and/or tinnitus.

COUNT I
Design Defect—Strict Liability

43. Plaintiff incorporates all other allegations by reference.

44. Defendants are manufacturers and sellers of the defective dual-ended Combat Arms Earplugs.

45. Plaintiff was a foreseeable — and, in fact, intended — user of the dual-ended Combat Arms Earplugs.

46. The earplugs are defective because their design causes them to loosen in the wearer's ear, imperceptibly to the wearer, permitting damaging sounds to enter the ear canal by traveling around the outside of the earplug while the user incorrectly believes the earplug is working as intended.

47. Defendants knew the defective condition of the dual-ended Combat Arms Earplugs made them unreasonably dangerous to servicemembers.

48. The dual-ended Combat Arms Earplugs were dangerous when used by an ordinary user who used them as they were intended to be used.

49. The dual-ended Combat Arms Earplugs were dangerous to an extent beyond which would be contemplated by the ordinary user because the design of the earplugs allows for dangerous

sounds to bypass the plug altogether.

50. Defendants knew of the defective design at the time the dual-ended Combat Arms Earplugs were provided to Plaintiff.

51. At the time the dual-ended Combat Arms Earplugs left Defendants' possession, the dual-ended Combat Arms Earplugs were defective and were in a condition that made them unreasonably dangerous to ordinary servicemembers.

52. At all relevant times, Plaintiff used the dual-ended Combat Arms Earplugs in the manner in which they were intended.

53. The dual-ended Combat Arms Earplugs were the proximate cause of Plaintiff's hearing impairment.

54. Defendants' conduct was a substantial factor in bringing about Plaintiff's injuries.

55. As a direct and proximate result of Defendants' actions, Plaintiff suffered serious injuries, including hearing impairment.

56. The conduct of Defendants described herein showed willful conduct and complete indifference to or conscious disregard for the safety of Plaintiff and others, thereby entitling Plaintiff to punitive damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants, that the Court award Plaintiff a fair and reasonable amount to adequately compensate him for his damages, including punitive damages, prejudgment interest, interest on the judgment, costs of this action, and such other and further relief as this Court deems just and proper.

COUNT II

Design Defect–Negligence

57. Plaintiff incorporates all other allegations by reference.

58. Defendants knew the dual-ended Combat Arms Earplugs would be used by

servicemembers.

59. Defendants had a duty to manufacture, design, formulate, test, package, label, produce, create, make, construct, assemble, market, advertise, promote, and distribute the dual-ended Combat Arms Earplugs with reasonable care for the safety of servicemembers, including Plaintiff.

60. The dual-ended Combat Arms Earplugs are defective in that the design of the earplug causes them to loosen in the wearer's ear, imperceptibly to the wearer, thereby permitting damaging sounds to enter the ear canal by traveling around the outside of the earplug while the user incorrectly believes that the earplug is working as intended.

61. When the earplugs are inserted into the ear according to Defendants' instructions, a proper seal is not formed in the ear canal. This defect has the same effect when either end is inserted because the earplugs are symmetrical.

62. Upon information and belief, Defendants failed to exercise reasonable and due care under the circumstances and therefore breached their duty in the following ways, among others:

- a. Failing to design the dual-ended Combat Arms Earplugs in a manner that would result in a NRR of 22 when used with the olive end inserted, according to the standard fitting instructions;
- b. Failing to properly test the dual-ended Combat Arms Earplugs;
- c. Failing to properly analyze the data resulting from testing of the dual-ended Combat Arms Earplugs;
- d. Designing, manufacturing, distributing, and selling the dual-ended Combat Arms Earplugs without an adequate warning of the significant and dangerous risks of the earplugs;
- e. Designing, manufacturing, distributing, and selling the dual-ended Combat Arms Earplugs without providing proper instructions to avoid the harm that could foreseeably occur when using the earplugs according to standard instructions;

- f Failing to use the standard of care required of a reasonable and prudent designer, manufacturer, marketer, distributor, and seller of hearing protection products; and
- g Continuing to sell the earplugs after they knew or should have known of the earplugs' adverse effects and/or the availability of safer designs.

63. As a direct and proximate result of Defendants' actions, Plaintiff suffered serious injuries, including hearing impairment.

64. The conduct of Defendants described herein showed willful conduct and complete indifference to or conscious disregard for the safety of Plaintiff and others, thereby entitling Plaintiff to punitive damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants, that the Court award Plaintiff a fair and reasonable amount to adequately compensate him for his damages, including punitive damages, prejudgment interest, interest on the judgment, costs of this action, and such other and further relief as this Court deems just and proper.

COUNT III

Failure to Warn–Negligence

65. Plaintiff incorporates all other allegations by reference.

66. At all times relevant to this action, Defendants had a duty to manufacture, design, formulate, test, package, label, produce, create, make, construct, assemble, market, advertise, promote, and distribute the dual-ended Combat Arms Earplugs with reasonable and due care for the safety and well-being of servicemembers.

67. Plaintiff was a foreseeable — and, in fact, intended — user of the dual-ended Combat Arms Earplugs.

68. The dual-ended Combat Arms Earplugs are defective in that the design of the earplug causes them to loosen in the wearer's ear, imperceptibly to the wearer, thereby permitting

damaging sounds to enter the ear canal by traveling around the outside of the earplug while the user incorrectly believes the earplug is working as intended.

69. The dual-ended Combat Arms Earplugs contained no warnings, or in the alternative, inadequate warnings and/or instructions, as to the risk that the dual-ended Combat Arms Earplugs would allow for dangerous sounds to bypass the plug altogether, posing a serious risk to Plaintiff's hearing.

70. The warnings and instructions that accompanied the dual-ended Combat Arms Earplugs failed to provide that level of information that an ordinary consumer would expect when using the dual-ended Combat Arms Earplugs in a manner reasonably foreseeable to Defendants.

71. Had Plaintiff received a proper or adequate warning as to the risks associated with the dual-ended Combat Arms Earplugs, he would not have used the dual-ended Combat Arms Earplugs.

72. The dual-ended Combat Arms Earplugs were the proximate cause of Plaintiff's hearing impairment.

73. As a direct and proximate result of Defendants' actions, Plaintiff suffered serious injuries, including hearing impairment.

74. The conduct of Defendants described herein showed willful conduct and complete indifference to or conscious disregard for the safety of Plaintiff and others, thereby entitling Plaintiff to punitive damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants, that the Court award Plaintiff a fair and reasonable amount to adequately compensate him for his damages, including punitive damages, prejudgment interest, interest on the judgment, costs of this action, and such other and further relief as this Court deems just and proper.

COUNT IV
Breach of Express Warranty

75. Plaintiff incorporates all other allegations by reference.

76. In Defendants' statements, descriptions of the dual-ended Combat Arms Earplugs, and promises relating to the dual-ended Combat Arms Earplugs, Defendants expressly warranted, among other things, that the dual-ended Combat Arms Earplugs were safe and effective for their intended use and were designed and constructed to prevent harmful sounds from bypassing the earplugs to protect the user's hearing.

77. These warranties came in one or more of the following forms: (i) publicly made written and verbal assurances of safety; (ii) press releases and dissemination via the media, or uniform promotional information that was intended to create a demand for the dual-ended Combat Arms Earplugs (but which contained material misrepresentations and utterly failed to warn of the risks of the dual-ended Combat Arms Earplugs); (iii) verbal assurances made by Defendants' sales people about the safety of the dual-ended Combat Arms Earplugs which also downplayed the risks associated with the dual-ended Combat Arms Earplugs; and (iv) false and misleading written information and packaging.

78. When Defendants made these express warranties, they knew the purposes for which the dual-ended Combat Arms Earplugs were to be used and warranted the product to be in all respects safe and proper for such purposes.

79. Defendants drafted the documents and made statements upon which these warranty claims are based and, in doing so, defined the terms of those warranties.

80. The dual-ended Combat Arms Earplugs do not conform to Defendants' promises, descriptions, or affirmations of fact, and were not adequately packaged, labeled, promoted, and/or fit for the ordinary purposes for which such earplugs are used.

81. As a direct and proximate result of Defendants' actions, Plaintiff suffered serious injuries, including hearing impairment.

82. The conduct of Defendants described herein showed willful conduct and complete indifference to or conscious disregard for the safety of Plaintiff and others, thereby entitling Plaintiff to punitive damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants, that the Court award Plaintiff a fair and reasonable amount to adequately compensate him for his damages, including punitive damages, prejudgment interest, interest on the judgment, costs of this action, and such other and further relief as this Court deems just and proper.

COUNT V
Breach of Implied Warranties

83. Plaintiff incorporates all other allegations by reference.

84. At the time Defendants marketed, sold, and distributed the dual-ended Combat Arms Earplugs, they knew of the use for which the dual-ended Combat Arms Earplugs were intended and impliedly warranted the dual-ended Combat Arms Earplugs to be fit for a particular purpose and warranted that the dual-ended Combat Arms Earplugs were of merchantable quality and effective for such use.

85. Defendants knew, or had reason to know, that Plaintiff would rely on Defendants' judgment and skill in providing the dual-ended Combat Arms Earplugs for their intended use.

86. Plaintiff reasonably relied upon the skill and judgment of Defendants as to whether the dual-ended Combat Arms Earplugs were of merchantable quality, safe, and effective for their intended use.

87. Contrary to such implied warranties, the dual-ended Combat Arms Earplugs were neither of merchantable quality, nor safe or effective for their intended use, because the dual-ended

Combat Arms Earplugs were, and are, unreasonably dangerous, defective, unfit and ineffective for the ordinary purposes for which the dual-ended Combat Arms Earplugs were used.

88. As a direct and proximate result of Defendants' actions, Plaintiff suffered serious injuries, including hearing impairment.

89. The conduct of Defendants described herein showed willful conduct and complete indifference to or conscious disregard for the safety of Plaintiff and others, thereby entitling Plaintiff to punitive damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants, that the Court award Plaintiff a fair and reasonable amount to adequately compensate him for his damages, including punitive damages, prejudgment interest, interest on the judgment, costs of this action, and such other and further relief as this Court deems just and proper.

COUNT VI

Fraudulent Misrepresentation

90. Plaintiff incorporates all other allegations by reference.

91. Defendants falsely and fraudulently represented to Plaintiff and the public in general, that the dual-ended Combat Arms Earplugs had been properly tested and were free from all defects.

92. These representations were material.

93. Defendants intentionally manipulated testing of the dual-ended Combat Arms Earplugs, resulting in false and misleading NRRs and improper fitting instructions.

94. The representations made by Defendants were, in fact, false.

95. When Defendants made these representations, they knew the representations were false and willfully, wantonly and recklessly disregarded the truth.

96. These representations were made to defraud Plaintiff and the public and were made

with the intent of inducing Plaintiff and the public, to recommend, purchase, and use the dual-ended Combat Arms Earplugs.

97. Plaintiff was unaware that Defendants' representations were false.

98. Plaintiff relied on Defendants' representations in his choice to use dual-ended Combat Arms Earplugs, thereby sustaining injuries.

99. Plaintiff was justified in relying on Defendants' representations.

100. As a direct and proximate result of Defendants' actions, Plaintiff suffered serious injuries, including hearing impairment.

101. The conduct of Defendants described herein showed willful conduct and complete indifference to or conscious disregard for the safety of Plaintiff and others, thereby entitling Plaintiff to punitive damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants, that the Court award Plaintiff a fair and reasonable amount to adequately compensate him for his damages, including punitive damages, prejudgment interest, interest on the judgment, costs of this action, and such other and further relief as this Court deems just and proper.

COUNT VII *Fraudulent Concealment*

102. Plaintiff incorporates all other allegations by reference.

103. Defendants fraudulently concealed material information, including but not limited to the following:

- a. that testing of the dual-ended Combat Arms Earplugs was flawed;
- b. the level of hearing protection provided by the dual-ended Combat Arms Earplugs;

- c. their knowledge of the defects in the dual-ended Combat Arms Earplugs;
- d. that the dual-ended Combat Arms Earplugs were defective and would cause hearing impairment;
- e. that the dual-ended Combat Arms Earplugs were manufactured negligently;
- f. that the dual-ended Combat Arms Earplugs were manufactured defectively;
- g. that the dual-ended Combat Arms Earplugs were designed defectively;
- h. that the dual-ended Combat Arms Earplugs were designed negligently; and
- i. that the dual-ended Combat Arms Earplugs were designed improperly.

104. Defendants had a duty to disclose to Plaintiff these material facts.

105. Only Defendants had access to these material facts and Plaintiff could not have discovered these facts.

106. Plaintiff did not discover the truth nor could he have with reasonable diligence.

107. As a direct and proximate result of Defendants' actions described here, Plaintiff suffered serious injuries, including hearing impairment.

108. The conduct of Defendants described herein showed willful conduct and complete indifference to or conscious disregard for the safety of Plaintiff and others, thereby entitling Plaintiff to punitive damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants, that the Court award Plaintiff a fair and reasonable amount to adequately compensate him for his damages, including punitive damages, prejudgment interest, interest on the judgment, costs of this action, and such other and further relief as this Court deems just and proper.

COUNT VIII

Negligent Misrepresentation

109. Plaintiff incorporates all other allegations by reference.

110. Defendants supplied information to Plaintiff and the public regarding the earplugs.

111. Because of a failure of Defendants to exercise reasonable care, the information provided was false.

112. The information was provided intentionally by Defendants to Plaintiff.

113. Plaintiff justifiably relied on the information supplied.

114. Plaintiff did not discover the truth nor could he have with reasonable diligence.

115. As a direct and proximate result of Defendants' actions, Plaintiff suffered serious injuries, including hearing impairment.

116. The conduct of Defendants described herein showed willful conduct and complete indifference to or conscious disregard for the safety of Plaintiff and others, thereby entitling Plaintiff to punitive damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants, that the Court award Plaintiff a fair and reasonable amount to adequately compensate him for his damages, including punitive damages, prejudgment interest, interest on the judgment, costs of this action, and such other and further relief as this Court deems just and proper.

COUNT IX
Fraud and Deceit

117. Plaintiff incorporates all other allegations by reference.

118. Defendants' testing of the dual-ended Combat Arms Earplugs was manipulated.

119. As a result, Defendants distributed false information that overstated the level of hearing protection provided by the dual-ended Combat Arms Earplugs.

120. Upon information and belief, Defendants intentionally manipulated test results to falsely overstate the amount of hearing protection provided by the dual-ended Combat Arms Earplugs.

121. Plaintiff did in fact rely on and believe Defendants' representations to be true at the time they were made and relied upon the representations and was thereby induced to use and rely on the dual-ended Combat Arms Earplugs.

122. At the time the representations were made, Plaintiff did not know the truth regarding the dual-ended Combat Arms Earplugs.

123. Plaintiff did not discover the truth nor could he have with reasonable diligence.

124. Had Plaintiff known the truth he would not have used the earplugs.

125. As a direct and proximate result of Defendants' actions, Plaintiff suffered serious injuries, including hearing impairment.

126. The conduct of Defendants described herein showed willful conduct and complete indifference to or conscious disregard for the safety of Plaintiff and others, thereby entitling Plaintiff to punitive damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants, that the Court award Plaintiff a fair and reasonable amount to adequately compensate him for his damages, including punitive damages, prejudgment interest, interest on the judgment, costs of this action, and such other and further relief as this Court deems just and proper.

JURY TRIAL DEMANDED.

Dated: March 29, 2019

Respectfully submitted,

BOULWARE LAW LLC

By: /s/ Brandon J.B. Boulware

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Attorneys for Plaintiff

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

Bret Holder

(b) County of Residence of First Listed Plaintiff **Clay County, MO**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Brandon J.B. Boulware
Boulware Law LLC, 1600 Genessee St., Ste. 416
(816) 492-2826

DEFENDANTS**3M Company and Aearo Technologies, LLC**

County of Residence of First Listed Defendant **Out of District**
(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
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 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):

Brief description of cause:

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

DATE

03/29/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Brandon J.B. Boulware

FOR OFFICE USE ONLY

RECEIPT #

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.