

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

JOSEPH POAG,

Plaintiff,

v.

3M Company,

Defendant.

Case No.:

**COMPLAINT**

Jury Trial Demanded

Plaintiff brings the action, and alleges the following based on information and belief, the investigation of counsel, and personal knowledge:

**NATURE OF THE  
ACTION**

1. This case arises from a defective earplug manufactured by Defendant and sold to the United States Army for use by American soldiers. Plaintiff was issued a set of Defendant's dual-ended Combat Arms Earplugs-Version 2 ("Combat Arms Earplugs"). Plaintiff used the earplugs and, as a result of its defective condition and Defendant's misrepresentations, now suffers from permanent hearing loss.

**PARTIES**

2. Joseph Poag ("Plaintiff") served in the U.S. military from 2008 through 2017. During this time, Plaintiff was deployed to Afghanistan in 2012 and 2013. Plaintiff is a resident of Oroville, California.

3. Defendant 3M is a Delaware corporation with its principal place of business in St. Paul, Minnesota.

### **JURISDICTION**

4. This Court has subject matter jurisdiction because there is complete diversity between Plaintiff and Defendant and the amount in controversy exceeds \$75,000.00 exclusive of costs and interests. 28 U.S.C. § 1332(a)(1).

5. This Court has personal jurisdiction over Defendant because it maintains its principal place of business in St. Paul, Minnesota, regularly conducts business in Minnesota, and has sufficient minimum contacts with Minnesota. Defendant intentionally availed itself of this jurisdiction by marketing and selling products, including Combat Earplugs, from Minnesota. Defendant has a registered agent for service of process in Minnesota.

### **VENUE**

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

### **FACTUAL ALLEGATIONS**

#### **Plaintiff's Military Service**

7. Plaintiff joined the Army in 2008. Before joining the Army, Plaintiff had

no signs or symptoms of hearing loss.

8. While enlisted, Plaintiff was deployed to serve in Afghanistan in 2012 and 2013. Plaintiff's tour in Afghanistan lasted approximately 12-13 months.

9. Plaintiff was provided 3M's Dual-Ended Combat Arms™ Earplugs while in the service of the United States Army. As a result of using 3M's Dual-Ended Combat Arms™ Earplugs, Plaintiff suffered severe and permanent injuries, including hearing damage. Plaintiff was diagnosed with bilateral hearing loss and tinnitus while serving in the military, and medically retired in January 2017 with bilateral hearing loss. Plaintiff regularly uses hearing aids as a result of the hearing loss.

10. As of 2004, all soldiers deployed to Iraq and Afghanistan were issued Dual-Ended Combat Arms™ Earplugs. These earplugs were originally created by a company called Aearo Technologies ("Aearo"). 3M acquired Aearo in 2008 for \$1.2 billion dollars and hired the Aearo employees that developed and tested the defective earplugs. These 3M employees were aware of the defects as early as 2000, several years before 3M/Aearo became the exclusive provider of the earplugs to the military.

11. Post-acquisition, the Combat Arms earplugs have been marketed and sold under the 3M brand. Because 3M acquired both the assets and liabilities of Aearo, Aearo and 3M are used interchangeably and referred to herein as "Defendant."

12. The 3M Combat Arms earplugs have dangerous defects that can cause them to loosen in the wearer's ear, unknown to the wearer and even trained audiologists visually observing a wearer, thereby permitting damaging sounds to enter the ear canal by

traveling around the outside of the earplug while the user and/or audiologist incorrectly believes that the earplug is working as intended. Because the stem of the dual-ended earplug is too short, it is difficult to insert the plug deeply into some wearer's ear canals and obtain a proper fit. The defect has the same effect when either end is inserted because the earplugs are symmetrical. In either scenario, the effect is that the earplug may not maintain a tight seal in some wearers' ear canals such that dangerous sounds can bypass the plug altogether thereby posing serious risk to the wearer's hearing unbeknownst to him or her.

13. The 3M Combat Arms earplugs were designed for the specific purpose of providing servicemen and women a single set of earplugs that provide two options for hearing attenuation depending on how they are worn.

14. These dangerous design defects were known to Defendant in 2000 (and later 3M) when it completed testing of the dual-ended Combat Arms™ earplugs. Notwithstanding, Defendant submitted a bid in response to the military's Request for Proposal to supply large quantities of these defective earplugs and entered into a contract pursuant to which it became the exclusive supplier of earplugs to the military in approximately 2003.

15. Prior and subsequent to entering into this contract, Defendant also failed to inform anyone that it had previously instructed its test subjects to manipulate the earplugs in order to achieve efficacy based on the short stem. As such, Plaintiff used the earplugs according to the instructions provided, which were inadequate, and suffered significant hearing loss and damages as alleged herein.

### **Combat Arms Earplugs Are Defective and Deviated from Specifications**

16. Defendant represented that the Combat Arms earplugs would meet specific performance criteria established by the U.S. Government as a prerequisite for bidding on the IQC for earplugs.

17. However, at all times, Defendant's performance representations were false; and Defendant knew them to be false. In fact, Defendant knew these earplugs were defective and misrepresented information pertinent to the safety and efficacy of the earplugs well before Defendant became the exclusive supplier of earplugs to the U.S. military.

18. The Combat Arms earplugs had a dangerous design defect that caused them to loosen in the wearer's ear, thus allowing damaging sounds to enter the ear canal around the outside of the earplug. Specifically, the basal edge of the third flange of the non-inserted end of the earplug is prone to press against some wearers' ear canals and fold back to its original shape, thereby loosening the seal in their earcanals.

19. The symmetrical design of the earplug meant that this design defect would occur whether a user inserted the earplugs in the blocked or unblocked position. This defect was known to Defendant as early as 2000.

20. In or around January 2000, Defendant began NRR testing on each end of the Combat Arms earplug. Rather than use an independent test lab, Defendant performed its testing in-house at its E-A-RCAL laboratory (also now owned by 3M). Defendant selected 10 test subjects, including some of its own employees. Defendant's test protocol involved testing: (1) the subject's hearing without an earplug; (2) the subject's

hearing with the open/unblocked (yellow) end of the Combat Arms earplug inserted; and (3) the subject's hearing with the closed/blocked (green) end of the Combat Arms earplug inserted.

21. Defendant's own employees monitored the test results as the tests were performed, which allowed them to stop the testing at any point if they were not achieving the desired NRR. This violated the ANSI S3.19-1974 testing protocol. In fact, Defendant stopped the test of the green end of the Combat Arms earplug inserted after only 8 of the 10 subjects had been tested and manipulated the NPR and rating on its labels.

22. During this process, Defendant learned that the stem of the earplug was too short, and, as a result, it was difficult to insert the earplug deeply enough into the wearer's ear canal to obtain a proper fit as required by ANSI S3.19-1974, Section 3.2.3. *See* Acoustical Society of America Standard Method for the Measurement of Real-Ear Protection of Hearing Protectors and Physical Attenuation of Earmuffs (ASA STD 1-1975). Therefore, Defendant manipulated the test protocol by instructing the test subjects to fold the flanges on the non-inserted end of the earplug back before inserting it into the ear. This information was not disclosed to end users or to Plaintiff.

23. Using the manipulated fitting instructions, Defendant re-tested the green end of the Combat Arms earplugs starting in February 2000. During this re-test of the green end, test subjects folded back the yellow flanges of the earplug (essentially elongating the too- short defective stem) to allow them to insert the earplugs deeper into their ears to obtain a proper fit. Because the yellow flanges were folded back, the basal

edge of the third flange no longer pressed against the subject's ear canal, and thus did not cause the earplug to loosen during the testing. Using this manipulated test protocol, Defendant achieved a 22 NRR on the green end of the Combat Arms earplug.

24. Due to the symmetrical nature of the Combat Arms earplugs, the design defect that affected the fit of the green end similarly affected the fit of the yellow end. The fact that Defendant's testing of the yellow end resulted in a -2 NRR meant that the earplugs did not provide a proper fit (as required by ANSI S3.19-1974, Section 3.2.3) between the ear canal of at least some of the subjects and the earplugs. As a result, some subjects had large standard deviations across trials on the yellow end test, which suppressed the NRR rating.

25. Nevertheless, Defendant did not re-test the yellow end using the manipulated fitting instructions like it did on the green end because it knew that it would not be able to reach a satisfactory NPR, which was a key selling point in its marketing pitch to the U.S. military.

### **Defendant's False Certifications to the U.S. Military**

26. In 2003, Defendant submitted a bid in response to the U.S. military's Request for Proposal ("RFP") to supply large quantities of Combat Arms earplugs. The RFP required bidders to certify that the earplugs complied with the Salient Characteristics of Medical Procurement Item Description ("MPID") of Solicitation No. SP0200-06-R-4202. In its bid, Defendant certified the Combat Arms earplugs complied with the MPID, even though Defendant knew that certification to be false.

27. The pertinent Salient Characteristics of MPID in each RFP, in relevant part, were:

2.1.1. Ear plugs shall be designed to provide protection from the impulse noises created by military firearms, while allowing the wearer to clearly hear normal speech and other quieter sounds, such as voice commands, on the battlefield.

2.2.2 The sound attenuation of both ends of the ear plugs shall be tested in accordance with ANSI S3.19....

2.4. Workmanship. The ear plugs shall be free from all defects that detract from their appearance or impair their serviceability.

2.5. Instructions. Illustrated instructions explaining the proper use and handling of the earplugs shall be supplied with each unit....

Solicitation No. SP0200-06-R-4202, at 41-42.

28. Defendant knew that its test protocol did not comply with ANSI S3.19 but nevertheless certified that its testing was fully compliant with the U.S. military's specifications.

29. Defendant also falsely certified that it provided accurate "instructions explaining the proper use and handling of the ear plugs." Defendant knew when it did so that its own testing had revealed a design defect that needed modified fitting instructions to ensure a proper fit that would deliver the promised NRR. At no time did Defendant disclose the modified fitting instructions to the U.S. military—even after winning the bid.

30. Pursuant to Section 2.4 of the MPID, Defendant was required to certify that the "ear plugs shall be free from all defects that detract from their appearance or impair their serviceability." Despite Defendant knowing since 2000 that its Combat Arms earplugs suffered from a design defect, Defendant certified to the U.S. military that its earplugs had no defects.



31. Based on its facially invalid test results, Defendant falsely reported to the U.S. military that the yellow end of its Combat Arms earplugs had a 0 NRR, which would allow servicemen to freely communicate with their fellow servicemen and avoid any impairment to hear enemy combatants.

32. Defendant also certified that the green end of its Combat Arms earplugs had a 22 NRR, even though Defendant did not disclose the modified fitting instructions necessary to achieve the hearing protection afforded by a 22 NRR. Nothing in these fitting instructions disclosed that it was necessary to fold back the flanges of the opposite end to ensure a proper fit and achieve the promised NRR. By failing to provide this disclosure, Defendant falsely overstated the amount of hearing protection afforded by the green end of the earplug and overstated the benefits of the yellow end of the earplug.

33. Based on Defendant's false representations, its bid was the prevailing bid and Defendant entered into the first of a series of IQCs later that year making it the exclusive provider of selective attenuation earplugs to the U.S. military.

34. Importantly, and in response to future RFP's, Defendant re-certified that the Combat Arms earplugs met the MPID criteria, even though Defendant knew that to be false.

35. Indeed, Defendant continued to sell the Combat Arms earplugs to the U.S. military until late 2015, at which time Defendant discontinued the earplug. However, Defendant did not recall the earplugs despite discontinuing them due to the design defect.

36. Defendant's misrepresentations about the benefits and protections provided by the Combat Arms earplugs caused Plaintiff to suffer hearing loss.

### **TOLLING OF STATUTES OF LIMITATIONS**

37. Under the Servicemembers Civil Relief Act, the period of Plaintiff's military service may not be included in computing any statute of limitations applicable herein. *See* 50 U.S.C. § 3936.

38. Plaintiff could not, by the exercise of reasonable diligence, have discovered Defendant's wrongful acts as the cause of his injuries at an earlier time, because, at the time of these injuries, the cause was unknown to Plaintiff. Plaintiff did not suspect, nor did Plaintiff have reason to suspect, the cause of these injuries, or the tortious nature of the conduct causing these injuries, until less than the applicable limitations period prior to the filing of this action.

39. Further, the running of the statute of limitations has been tolled by reason of Defendant's fraudulent concealment. Through their affirmative misrepresentations and omissions, Defendant actively concealed from Plaintiff the risks associated with the defects in the Combat Arms earplugs.

40. As a result of Defendant's actions, Plaintiff was unaware, and could not reasonably know or have learned through reasonable diligence that he had been exposed to the defects and risks alleged herein, and that those defects and risks were the direct and proximate result of Defendant's acts and omissions.

41. Through Defendant's affirmative misrepresentations and omissions pertaining to the safety and efficacy of the Combat Arms earplugs, Plaintiff was prevented from discovering this information sooner because Defendant misrepresented

and continued to misrepresent the defective nature of the Combat Arms earplugs.

**COUNT I:**

**NEGLIGENCE**

42. Plaintiff incorporates by reference the paragraphs above as if fully set forth herein.

43. Defendant had a duty to use their professional expertise and exercise that degree of skill and learning ordinarily used under the same or similar business by a person or entity in Defendant's business of designing, developing, testing, manufacturing, marketing, and distributing hearing protection devices.

44. Defendant further had a duty to comply with the certifications made to the U.S. government about the qualities and performance characteristics of the Combat Arms earplugs. Plaintiff is among the class of persons designed to be protected by these regulations and certification standards. He was a foreseeable plaintiff to Defendant.

45. Defendant breached these duties by failing to exercise the required degree of care in designing, developing, testing, manufacturing, marketing, and distributing hearing protection devices in a manner to provide the specified level of hearing protection.

46. The damages suffered by Plaintiff was or should have been reasonably foreseeable to Defendant.

47. Plaintiff was damaged by Defendant's conduct, including but not limited to damage to his hearing.

48. Defendant's breaches are a direct and proximate cause of the injuries and damages suffered by Plaintiff in an amount not yet fully determined, but in excess of \$75,000.00, exclusive of costs and interest. Plaintiff is entitled to recover damages and other relief as available, at law or equity, as a direct and proximate result of Defendant's conduct.

**COUNT II:**

**STRICT PRODUCTS LIABILITY – DESIGN DEFECT**

49. Plaintiff incorporates by reference the paragraphs above as if fully set forth herein.

50. Defendant is the manufacturer and seller of the defective Combat Arms earplugs.

51. The defective Combat Arms earplugs that Defendant manufactured, distributed, and sold were, at the time they left Defendant's control, defectively designed in that the design of the earplug caused it to loosen in the wearer's ear, which allowed damaging sounds to enter the ear canal.

52. The defective Combat Arms earplugs that Defendant manufactured, distributed, and sold were, at the time they left Defendant's control, defective and unreasonably dangerous for their ordinary and expected use because they did not stop the damaging loud noises of military use that can cause hearing loss.

53. The defective Combat Arms earplugs that Defendant manufactured, distributed, and sold were, at the time they left Defendant's control, defective and not

reasonably safe for its intended use.

54. Defendant knew of the defect in the Combat Arms earplugs.

55. No reasonably prudent manufacturer would design, distribute, and sell an earplug with the knowledge that Defendant had, namely that the stem of the earplug was too short to fit correctly in many people's ears and that if not fitted correctly the earplugs would not guard against loud impulse noises and could cause hearing loss.

56. The defective Combat Arms earplugs that the Defendant manufactured, distributed, and sold were delivered to Plaintiff without any change in their defective condition and were used by Plaintiff in the manner expected and intended.

57. Defendant owed a duty of care to Plaintiff to design, manufacture, and sell earplugs that met the specified performance criteria and were otherwise fit for use by servicemen to protect them from damaging noises typically incurred in military service. Defendant breached this duty.

58. Defendant owed a duty of care to Plaintiff to design and sell earplugs that were fit for use in military service and that performed according to the specifications that Defendant certified the Combat Arms earplugs would meet. Defendant breached this duty.

59. Defendant owed a duty of care to Plaintiff to design and sell earplugs that were safe when used for their intended purpose; i.e., when in the presence of loud impulse sounds. Defendant breached this duty.

60. Plaintiff suffered injury and damage as a direct and proximate result of the defective and unreasonably, unsafe, dangerous condition of the Combat Arms earplugs

that the Defendant manufactured, distributed, and sold.

**COUNT III:**

**STRICT PRODUCT LIABILITY – FAILURE TO WARN**

61. Plaintiff incorporates by reference the paragraphs above as if fully set forth herein.

62. Defendant is the manufacturer and seller of the defective Combat Arms earplugs.

63. The defective Combat Arms earplugs that Defendant manufactured, distributed, and sold were, at the time they left Defendant's control, defective because the earplugs did not come with adequate warnings, instructions, or labels.

64. The defective Combat Arms earplugs that Defendant manufactured, distributed, and sold were, at the time they left Defendant's control, defective because Defendant failed to warn, failed to provide instructions, and failed to provide an adequate label that included the modified fitting instructions necessary for the earplug to fit correctly in the wearer's ear and create the seal necessary to block out the damaging sounds.

65. Defendant had a duty to manufacture, design, and sell the Combat Arms earplugs with reasonable and due care for the safety and well-being of wearers, including Plaintiff. Defendant breached that duty.

66. Defendant had a duty to provide adequate warnings and/or instructions to prevent the risks associated with the Combat Arms earplugs when worn in the ordinary

course. Defendant breached that duty.

67. It was foreseeable to Defendant that the Combat Arms earplugs would be unreasonably dangerous if distributed without the warning regarding the risks of damage to the ear with an improper fit and/or modified fitting instructions.

68. Not only was it foreseeable, it was foreseen by Defendant. During testing, Defendant discovered that because the stem of the earplug was so short, it was difficult to insert the earplug deep enough into the wearer's ear canal to obtain a proper fit.

69. Defendant also discovered that when the green end of the Combat Arms earplug was inserted into the ear using the standard fitting instructions, the basal edge of the third flange of the yellow end pressed against the wearer's ear and folded backward. When the inward pressure of the earplug was released, the yellow flanges tended to return to their original shape, thereby loosening the earplug, often imperceptibly to the wearer. And, because the Combat Arms earplug was symmetrical, this same problem occurred when the earplug was reversed.

70. Defendant had a post-sale duty to warn of the above alleged product-related defects and risks because Defendant knew or reasonably should have known that the Combat Arms earplug posed a substantial risk of harm to servicemen, including Plaintiff; the servicemen who used the Combat Arms earplug can reasonably be assumed to be unaware of the risk of harm caused by the above-alleged defects because said defects were imperceptible; a warning or instruction showing how to correctly and safely use the Combat Arms earplug could have been effectively communicated to and acted upon by the servicemen to whom a warning or instruction might be provided; and the risk of harm,

including but not limited to hearing loss in servicemen, is sufficiently great to justify the slight burden of providing a warning or instruction. Defendant breached this duty by failing to provide a post-sale warning or instruction.

71. The Combat Arms earplugs contained no warnings, or in the alternative, inadequate warnings and/or instructions, as to the risk that the Combat Arms earplugs would allow damaging sounds to bypass the earplug thereby posing a serious risk to Plaintiff's hearing unbeknownst to Plaintiff.

72. The warnings and instructions that accompanied the Combat Arms earplugs failed to provide the level of information that an ordinary wearer would expect when using the Combat Arms earplugs in a manner reasonably foreseeable to Defendant.

73. Had Plaintiff received a proper or adequate warning as to the risks associated with the use of the Combat Arms earplugs in the manner contemplated by Defendant, he would not have used them.

74. Additionally, and/or alternatively, had Plaintiff received the modified fitting instructions that were used by Defendant during the testing, which were not disclosed to Plaintiff, Plaintiff would have followed the modified fitting instructions to ensure a proper seal to prevent damaging sounds from entering the earcanal.

75. Plaintiff suffered injury and damage as a direct and proximate result of the use-defectiveness and Defendant's failures to warn and/or provide adequate instructions regarding the dangerous condition of the Combat Arms earplugs that the Defendant manufactured, distributed, and sold.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests from Defendant compensatory damages, together with appropriate equitable relief, costs and attorneys' fees as follows:

- A. Award of monetary damages, including compensatory relief, to which Plaintiff is entitled at the time of trial in an amount exceeding \$75,000.00, exclusive of costs and interest.
- B. Award of pre- and post-judgment interest.
- C. Award of costs.
- D. Award of all such other and further relief as may be available at law or equity and may be proper under the circumstances.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury on all issues so triable.

Dated: March 15, 2019

**ZIMMERMAN REED LLP**

s/ Jason P. Johnston

J. Gordon Rudd, Jr., MN Bar No. 222082

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(*pro hac forthcoming*)

**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**

Joseph Poag

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Jason P. Johnston, ZIMMERMAN REED LLP  
1100 IDS Center, 80 South 8th Street  
Minneapolis, MN 55402 - (612) 341-0400

**DEFENDANTS**

3M Company

County of Residence of First Listed Defendant Ramsey  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 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 type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input 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)Click here for: [Nature of Suit Code Descriptions.](#)

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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>LABOR</b> <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 <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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"/> 376 Qui Tam (31 USC 3729(a)) <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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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 <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <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 <b>Other:</b> <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 - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**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(a)(1)

Brief description of cause:  
Products Liability case alleging injuries caused by defective ear plugs

**VII. REQUESTED IN COMPLAINT:**

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

DEMAND \$  
\$75,000 +

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

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE John R. TunheimDOCKET NUMBER 19-cv-00236

DATE

SIGNATURE OF ATTORNEY OF RECORD

March 15, 2019

s/Jason P. Johnston

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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.