

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**

**Case No.:**

JONATHAN N. DUFRESNE-YIDI,  
on behalf of himself and all others  
similarly situated,

Plaintiff,

vs.

3M COMPANY,

Defendant.

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**CLASS ACTION AND INDIVIDUAL COMPLAINT<sup>1</sup>**

Plaintiff, Jonathan N. Dufresne-Yidi, brings this federal Complaint against Defendant 3M COMPANY (hereinafter referred to as “Defendant,” “3M,” or “3M/Aearo”): (1) on his own behalf to recover damages for his personal injuries incurred while in training and/or on active military duty, resulting from Defendant’s defective and unreasonably dangerous product, the Dual-ended Combat Arms™ earplugs (Version 2 CAEv.2) (“Dual-ended Combat Arms™ earplugs”), and (2) on behalf of himself and all other similarly-situated individuals, requested to establish a Court-supervised fund to provide medical monitoring to active-duty and veteran service members of the armed forces of the United States of America due to their increased risk from using 3M’s defective products, and to extend some of the claims deadlines for fraudulent tolling.

**PLAINTIFF JONATHAN N. DUFRESNE-YIDI**

1. Plaintiff Dufresne-Yidi joined the military in 2008 and was discharged in 2013.
2. Prior to joining the military, Plaintiff had no signs or symptoms of hearing loss.
3. Plaintiff was deployed for active duty in Afghanistan from May 2009–August 2009, from March 2010–July 2010, January 2011– May 2011, and from December 2011–March 2012, and fought on behalf of our country during all of those years.

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<sup>1</sup> The Multi District Litigation Panel has already set a hearing for March 28th to decide whether the hundreds of similar pending cases filed all around the country should all be consolidated and if so, to decide where to transfer them. Undersigned Counsel has filed a Request to Consolidate all of these cases against 3M to the Southern District of Florida.

4. At the time of Plaintiff's deployment and during his pre-deployment training, the 3M Dual-ended Combat Arms™ earplugs were standard issue and issued to Plaintiff.

5. The Dual-ended Combat Arms™ earplugs were provided and used by Plaintiff.

6. The Dual-ended Combat Arms™ earplugs were provided for single use while Plaintiff was deployed and during his pre-deployment training.

7. Plaintiff wore the Dual-ended Combat Arms™ earplugs while in training and in the field and while in active duty.

8. Plaintiff now suffers from hearing loss and tinnitus as a direct result of 3M's admittedly defective products. This case seeks, among other things, damages for Mr. Dufresne-Yidi as a direct result of him using these defective ear plugs while serving our country.

### **NATURE OF THE ACTION**

9. This action arises out of serious and permanent personal injuries sustained by Plaintiff, a veteran of the United States military, as well as thousands of similarly situated veterans, who all risked their lives while defending our country. They used these defective earplugs in training and/or on active military duty domestically and abroad.

10. Plaintiff specifically used Defendant's dangerously defective Dual-ended Combat Arms™ earplugs while deployed in Afghanistan and during other training and combat exercises. Defendant sold the Dual-ended Combat Arms™ earplugs to the U.S. military for more than a decade without the military and/or Plaintiff having any knowledge of the defect(s) and failed to adequately warn the military and/or Plaintiff of the defect(s).

11. Defendant's Dual-ended Combat Arms™ earplugs were standard issue in certain branches of the military (including Plaintiff's) between at least 2003 to at least 2015. Thus, Defendant's Dual-ended Combat Arms™ earplugs caused at least tens of thousands of soldiers to suffer significant hearing loss, and additional injuries related to hearing loss, including but not limited to pain and suffering and loss of the pleasures of life.

12. South Florida is the home to more veterans than almost any other jurisdiction in the United States and Plaintiff, like many of the other proposed class members, all now reside in South Florida and many may serve as witnesses in this litigation. Indeed, Florida is home to over 257,080 veterans who served in the military during the periods when the Dual-ended Combat Arms™ earplugs were standard issue.

13. This is a huge issue for the Department of Veteran Affairs (the “VA”), as recent data indicates that as many as 52% of combat soldiers may suffer hearing loss, representing what is possibly the largest ongoing medical cost for the military.

**PARTIES, JURISDICTION, AND VENUE**

14. Plaintiff is a citizen of Broward County, Florida.

15. Defendant is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in St. Paul, Minnesota. Among other things, Defendant is in the business of designing, manufacturing, and selling worker safety products, including hearing protectors and respirators. Defendant has a dominant market share in virtually every safety product market, including hearing protection. Defendant is one of the largest companies in the country.

16. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(1). The amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and Plaintiff and Defendant are citizens of different states.

17. Personal jurisdiction over Defendant is proper because it has done business in the State of Florida, has committed a tort in whole or in part in the State of Florida, has substantial and continuing contact with the State of Florida, and derives substantial revenue from goods used and consumed within the State of Florida. In fact, there are twenty-one military bases in the State of Florida, that include servicemembers from every branch of the military, to which Defendant has provided its products.

18. Additionally, the State of Florida has the third largest population of veterans in the nation with more than 1.5 million veterans – 12 percent of the State’s population 18 and over. Many of these veterans were also exposed to Defendant’s products. The Department of Veterans Affairs spends more than \$1 billion annually treating hearing loss for over 800,000 veterans, according to most recent estimates cited in court documents.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) as a substantial part of the events or omissions giving rise to the claim occurred in this District.

**FACTUAL ALLEGATIONS**

20. The allegations in this Complaint are based in part upon the pleadings and allegations as contained in *United States ex rel. Moldex-Metric, Inc. v. 3M Company*, Case No. 3:16-cv- 01533-DCC (D.S.C. 2016), and upon publicly available information and materials. Certainly much discovery will be produced by Defendant after this case proceeds.

21. On July 26, 2018, Defendant agreed to pay \$9.1 million to resolve allegations that it knowingly sold the Dual-ended Combat Arms™ Earplugs to the United States military without disclosing defects that hampered the effectiveness of the hearing protection device. *See* United States Department of Justice, *3M Company Agrees to Pay \$9.1 Million to Resolve Allegations That it Supplied the United States With Defective Dual-Ended Combat Arms Earplugs* (Jul. 26, 2018), available at <https://www.justice.gov/opa/pr/3m-company-agrees-pay-91-million-resolve-allegations-it-supplied-united-states-defective-dual> (last visited January 11, 2019).

22. Defendant's Dual-ended Combat Arms™ earplugs are non-linear, or selective attenuation, earplugs which were designed to provide soldiers with two different options for hearing attenuation depending upon how the plugs are worn. Both sides of the dual-sided earplugs were purported to provide adequate protection for soldier's ears when worn.



23. If worn in the “closed” or “blocked” position (with the olive end in the user's ear), the earplugs are intended to act as a traditional earplug and block as much sound as possible.

24. If worn in the “open” or “unblocked” position (with the yellow end in user's ear), the earplugs are intended reduce loud impulse sounds, such as battlefield explosions and artillery fire, while allowing the user to hear quieter noises; for example, commands spoken by fellow soldiers and approaching enemy combatants.

25. Defendant's standard fitting instructions state the wearer is to grasp the earplug by the stem and insert it into the ear canal.

26. The design of the earplug prevents a snug fit in the ear canal of the wearer, an inherent defect about which there was no adequate warning.

27. When inserted in accordance with Defendant's standard fitting instructions, the edge of the third flange of the non-inserted end of the earplug presses against the wearers' ear canal and folds back to its original shape, thereby loosening the seal in their ear canals and providing inadequate protection.

28. Because the earplugs are symmetrical, the standard fitting instructions will result in a loosening of the seal if either side is inserted into the ear canal.

29. These earplugs were originally created by a company called Aearo Technologies ("Aearo" or "3M/Aearo").

30. Defendant 3M acquired Aearo in 2008, including Aearo's liabilities. Thus, 3M is liable for Aearo's conduct as alleged herein.

31. Earplugs like the Dual-ended Combat Arms™ earplugs are sold with a stated Noise Reduction Rating ("NRR")<sup>2</sup> that should accurately reflect the effectiveness of hearing protection.

32. The military likely purchased, at a minimum, one pair of 3M's Combat Arms™ earplugs for each deployed soldier annually involved in certain foreign engagements between at least 2003 and at least 2015. *See* McIlwain, D. Scott *et al.*, *Heritage of Army Audiology and the Road Ahead: The Army Hearing Program*, AMERICAN JOURNAL OF PUBLIC HEALTH, Vol. 98 No. 12 (Dec. 2008).

33. 3M's/Aearo's Dual-ended Combat Arms™ earplugs were sold to the military beginning in at least late 2003 and continued to be sold directly and indirectly by 3M to the military until at least late 2015, when Defendant discontinued the earplugs.

34. The defective earplugs have not been recalled and therefore could very well be in continued use by soldiers and others.

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<sup>2</sup> Noise Reduction Rating (NRR) is a unit of measurement used to determine the effectiveness of hearing protection devices to decrease sound exposure within a given working environment. Classified by their potential to reduce noise in decibels (dB), a term used to categorize the power or density of sound, hearing protectors must be tested and approved by the American National Standards (ANSI) in accordance with the Occupational Safety & Health Administration (OSHA). The higher the NRR number associated with a hearing protector, the greater the potential for noise reduction.

**HISTORY OF TESTING:  
January 2000 Testing**

35. Employees from 3M/Aearo began testing the Dual-ended Combat Arms™ earplugs in approximately January 2000.

36. 3M/Aearo chose to conduct the testing at its own laboratory rather than an outside, independent laboratory.

37. 3M/Aearo's employees personally selected ten test subjects (some of whom were also employees of 3M/Aearo) to test the Dual-ended Combat Arms™ earplugs.

38. 3M/Aearo's employees intended to test: (1) the subject's hearing without an earplug inserted; (2) the subject's hearing with the open/unblocked (yellow) end of the Dual-ended Combat Arms™ earplug inserted; and (3) the subject's hearing with the closed/blocked (olive) end of the Dual-ended Combat Arms™ earplug inserted. This testing was designed to provide data regarding the "NRR" of the Dual-ended Combat Arms™ earplugs.

39. 3M/Aero personnel monitored the results of each subject as the test was performed and could thus stop the test if the desired NRR results were not achieved.

40. Eight of the ten subjects were tested using both the open and closed end of the Dual-ended Combat Arms™ earplug.

41. Testing of the eight subjects suggested an average NRR of 10.9, which was far below the adequate NRR that 3M/Aero personnel would and should have expected for the closed end.

42. 3M/Aero prematurely terminated the January 2000 testing of the closed end of the Dual-ended Combat Arms™ earplug.

43. 3M/Aero personnel determined that when the closed, olive end of the earplug was inserted into the wearer's ear according to standard fitting instructions, the basal edge of the third flange of the open, yellow end would press against the wearer's ear and fold backwards. When the inward pressure on the earplug was released, the yellow side flanges would return to their original shape and cause the earplug to loosen, often imperceptible to the wearer.

44. The symmetrical nature of the earplug prevents a snug fit when worn either "open" or "closed" according to the standard fitting instructions.

45. 3M/Aero personnel determined that a snug fit requires the flanges on the opposite, non-inserted end of the ear plug to be folded back prior to insertion.

46. 3M/Aero personnel decided not to test the closed end of the Dual-ended Combat Arms™ earplug for two of the ten subjects because the results were well below the intended and desired NRR.

47. 3M/Aero completed testing of all ten subjects with the open end of the Dual-ended Combat Arms™ earplug to obtain a facially invalid -2 NRR, which would indicate that the closed end of the earplug actually amplified sound.

48. 3M/Aero represented the -2 NRR as a “0” NRR which 3M/Aero has displayed on its packaging since its launch.

49. 3M/Aero falsely touts the “0” NRR as a benefit of the Dual-ended Combat Arms™ earplug, by suggesting that soldiers will be able to hear their fellow soldiers and enemies while still providing some protection. As stated however, the “true” -2 NRR actually *amplifies* sound, thereby exposing the wearer to harm.

#### **February 2000 Testing**

50. Upon identifying the fit issue, 3M/Aero re-tested the olive, closed end of the Dual-ended Combat Arms™ earplug in February 2000 using different fitting instructions.

51. When testing the closed end, 3M/Aero personnel folded back the yellow flanges on the open end of the Dual-ended Combat Arms™ earplug prior to insertion.

52. Using this “modified” fitting procedure, 3M/Aero achieved a “22” NRR on the closed end of the Dual-ended Combat Arms™ earplug.

53. 3M, however, never properly warned serviceman that the only potential way to achieve this purported NRR was to modify the Dual-ended Combat Arms™ earplug by folding the yellow flanges on the opposite end.

54. The yellow, open end of the Dual-ended Combat Arms™ earplug was not re- tested using the “modified” fitting procedure.

#### **Defendant’s Representations and Omissions**

55. Since 2003, 3M/Aero has been awarded multiple Indefinite-Quantity Contracts (“IQC”) from the U.S. military in response to Requests for Production (“RFP”).

56. From 2003–2012, 3M/Aero was the exclusive supplier of these type of earplugs to the U.S. military.

57. 3M/Aero was aware of the design defects alleged herein in as early as 2000.



58. Accordingly, the defects of the Dual-ended Combat Arms™ earplugs were known to Defendant many years before 3M/Aearo became the exclusive provider of the earplugs to the U.S. military.

59. 3M/Aearo knew at the time it bid for the initial IQC that the Dual-ended Combat Arms™ earplugs had dangerous design defects as they would not adequately protect the users from loud sounds and did not adequately warn of the defects or adequately warn how to wear the earplugs.

60. 3M/Aero responded to the military's Requests for Proposal ("RFP") with express certifications that it complied with the Salient Characteristics of Medical Procurement Item Description ("MPID") of Solicitation No. SP0200-06-R-4202.

61. 3M/Aearo knew at the time it made its certifications that the earplugs did not comply with the MPID.

62. 3M/Aearo knew the design defects could cause the earplugs to loosen in the wearer's ear, imperceptibly 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.

63. The pertinent Salient Characteristics set forth in the MPID, which were uniform across all RFPs, in relevant part, are as follows:

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 ear plugs shall be supplied with each unit.**

Solicitation No. SP0200-06-R-4202 at 41–42 (emphasis added).

64. The Environmental Protection Agency ("EPA") has also promulgated regulations pursuant to the Noise Control Act, 42 U.S.C. § 4901, *et seq.*, that govern the testing and attendant labeling of hearing protective devices like the Dual-ended Combat Arms™ earplugs. Specifically, 40 C.F.R. § 211.206-1 provides that:



The value of sound attenuation to be used in the calculation of the Noise Reduction Rating must be determined according to the “Method for the Measurement of Real-Ear Protection of Hearing Protectors and Physical Attenuation of Earmuffs.” This standard is approved as the American National Standards Institute Standard (ANSI-STD) S3.19- 1974.

65. Additionally, EPA regulations requires certain “supporting information” must accompany hearing protection devices sold in the United States:

The following minimum supporting information must accompany the device in a manner that insures its availability to the prospective user. In the case of bulk packaging and dispensing, such supporting information must be affixed to the bulk container or dispenser in the same manner as the label, and in a readily visible location : **Instructions as to the proper insertion or placement of the device.**

40 C.F.R. § 211.204-4(e) (emphasis added).

66. 3M/Aearo knowingly used the deliberately flawed retest of the closed end of the earplugs to sell Dual-ended Combat Arms™ earplugs to the military with the representation that they possess a “22” NRR in the closed position.

67. Defendant includes standard instructions for “proper use” of the earplugs in the packaging for the earplugs as required by the EPA, Noise Control Act, and the MPID.

68. Defendant’s standard instructions for “proper use” of its Dual-ended Combat Arms™ earplugs do not instruct wearers to fold back the flanges of the opposite end before inserting the plug into the ear.

69. Instead, Defendant improperly instructs wearers to simply insert the earplugs into the ear canal.

70. By failing to instruct wearers of the Dual-ended Combat Arms™ earplug to fold back the flanges on the open/unblocked end of the plug before inserting the closed/blocked end of the plug into their ears (which is necessary to achieve the “22” NRR), 3M/Aearo falsely overstates the amount of hearing protection provided by the closed end of the plug.

71. 3M’s/Aearo’s packaging and marketing of such earplugs with a labeled NRR of “22” thereby misleads the wearer and has likely caused thousands of soldiers to suffer significant hearing loss in addition to exposing millions more to the risk caused by 3M/Aearo’s defective earplugs.

72. Despite knowing that its flawed testing involved steps to manipulate the fit of the earplug, 3M’s/Aearo’s standard instructions for use of the earplugs do not instruct, and never have instructed, the wearer to fold back the flanges on the open end of the plug before inserting the closed

end of the plug into their ears (which is necessary to achieve the “22” NRR and avoid the defect associated with the short stem).

73. 3M’s/Aearo’s instructions instead have provided standard fitting instructions for inserting the earplug on both ends which are facially inadequate.

74. 3M/Aearo was aware, prior to selling the earplugs to the military, that the testing procedures and fitting instructions were unlawfully manipulated to obtain the NRRs it wanted on both ends of the Dual-ended Combat Arms™ earplug. 3M/Aearo continued to use these inaccurate NRRs to market the plugs to the military for over a decade without disclosing the design defect in the plugs.

75. At all times relevant hereto, the Dual-ended Combat Arms™ earplugs were manufactured, designed, formulated, tested, packaged, labeled, produced, created, made, constructed, assembled, marketed, advertised, promoted, distributed, and sold by Defendant.

### **CLASS ALLEGATIONS**

76. Plaintiff is a representative of the Classes, as defined by Fed. R. Civ. P. 23(b)(2), and brings this action for medical monitoring relief on behalf of himself and Classes identified herein with respect to which 3M has acted or refused to act on grounds generally applicable to the Classes.

77. The “**National Class**” is defined as:

All active or retired combat military veterans who reside in the United States, who were issued Dual-ended Combat Arms™ earplugs.

78. If the National Class is not certified in this proceeding, Plaintiff reserves the right to bring state-only class medical monitoring claims for Plaintiff and members of the Classes residing in any of the 50 states.

79. The members of the Classes are so numerous and geographically widely dispersed that joinder of all members is impracticable. There are questions of law and fact common to the members of the Classes. Plaintiff’s claims are typical of the members of the Classes he seeks to represent, and Plaintiff will fairly and adequately protect the interests of the proposed Classes.

80. Questions of law and fact common to the members of the Classes predominate over any questions affecting only individual members of the Classes. These include, but are not limited to, the following:

- a. Whether Plaintiff and the Classes are entitled to injunctive relief in the form of a Court-supervised medical monitoring fund;
- b. Whether Defendant has any affirmative defenses that can be litigated on a classwide basis;

- c. Whether Defendant's conduct was tortious and caused members of the Classes to be at increased risk of hearing loss;
  - d. Whether medical monitoring is reasonably necessary for members of the Classes to obtain early diagnosis of hearing loss;
  - e. Whether such medical monitoring is beyond the routine medical care provided to people of a similar age as members of the Classes; and
  - f. Whether early diagnosis of hearing loss or tinnitus will lead to improved treatment for the medical, cognitive, psychological and behavioral sequelae of the hearing loss or tinnitus.
81. The members of the Classes are ascertainable.
82. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

## **CAUSES OF ACTION**

### **COUNT I**

#### **Medical Monitoring (On Behalf of the National Class)**

83. Plaintiff incorporates by reference paragraphs 1–82 as if fully set forth herein and further alleges as follows:

84. Plaintiff seeks to certify a National Medical Monitoring Class under the substantive law of the State of Florida. This is a huge issue for the Department of Veteran Affairs (the “VA”), as recent data indicates that as many as 52% of combat soldiers may suffer hearing loss, representing what is possibly the largest ongoing medical cost for the military. Additionally, the State of Florida has the third largest population of veterans in the nation with more than 1.5 million veterans – 12 percent of the State's population 18 and over. Many of these veterans specifically utilized Defendant's products and have since suffered serious damages as a direct result.

85. The Department of Veterans Affairs spends more than \$1 billion annually treating hearing loss for over 800,000 veterans, according to most recent estimates cited in court documents. According to the U.S. Department of Veterans Affairs (VA), more than 2.7 million veterans currently receive disability benefits for hearing loss or tinnitus, a ringing in the ears. The actual number may be even higher. “Those are veterans who have been through the process and documented by the VA,” says Gabrielle Saunders, associate director of the National Center for Rehabilitative Auditory Research, a VA-funded research facility in Portland, Ore. She says that there are probably many other veterans with hearing loss that the VA hasn't been able to document.

86. Veterans are 30 percent more likely than nonveterans to have severe hearing impairment, according to a Centers for Disease Control and Prevention analysis. Those who served after September 2001 are four times more likely. And their numbers are growing: In fiscal year 2016, 190,000 veterans were diagnosed with service-connected tinnitus, and 103,000 were diagnosed with hearing loss, according to the VA.

87. During their respective military careers, Plaintiff and the members of the Class experienced exposure to greatly increased risks of suffering serious and dangerous side effects including, bilateral hearing loss and tinnitus, and the injuries and damages as alleged herein, with greater frequency and severity than the general population of people of a similar age as a direct result of the use of these defective products.

88. The defectively designed Dual-ended Combat Arms™ earplugs used by Plaintiff and members of the Class during their respective military careers are known and proven to be hazardous because they increase the risks of developing bilateral hearing loss and/or tinnitus.

89. Defendant was fully aware of, yet concealed and misrepresented the dangers of exposing Plaintiff and members of the Class, to increased risks of bilateral hearing loss and tinnitus. By such tortious conduct, Defendant breached its duties of reasonable and ordinary care to the Plaintiff and members of the Class, and caused the increased risks to them, giving rise to the need for medical monitoring.

90. As a proximate result of Defendant's tortious conduct, Plaintiff and the members of the Class have experienced increased risks of hearing loss and tinnitus.

91. Monitoring procedures exist that comport with contemporary scientific principles and make possible early detection of the impairments and conditions that Plaintiff and members of the Class are at increased risks of developing. Such monitoring, which includes but is not limited to baseline exams, diagnostic exams, and behavioral and pharmaceutical interventions, will prevent or mitigate the injuries, and enable treatment of the adverse consequences associated with the use of Combat Ear Plugs described herein.

92. The monitoring procedures set forth above are fundamentally different from and more extensive than the normally prescribed medical treatment and/or diagnostic procedures for adults.

93. As set forth above, the monitoring procedures are reasonably necessary according to contemporary scientific principles, to enable Plaintiff and members of the Class to obtain early detection and diagnosis of the impairments and conditions that they are at increased risks of developing as a result of Defendant's tortious conduct described herein.

94. Plaintiff and members of the class therefore seek an injunction creating a Court-supervised, 3M-funded comprehensive medical monitoring program for Plaintiff and members of the Class, which would facilitate the early diagnosis and adequate treatment in the event hearing loss or tinnitus is diagnosed in Plaintiff or members of the Class.

95. Plaintiff and members of the Class have no adequate remedy at law in that monetary damages alone cannot compensate them for the increased risks of long-term physical and economic losses associated with hearing loss and tinnitus. Without a Court-supervised, 3M-funded comprehensive medical monitoring program as described herein, Plaintiff and members of the Class will continue to face increased risks of injury and disability, without proper diagnosis and opportunity for rehabilitation.

96. Plaintiff and members of the Class seek the establishment of a Court-supervised fund to provide medical monitoring based on the independent cause of action for medical monitoring, or alternatively as a form of relief associated with a claim for negligence or other tortious conduct.

**COUNT II**  
**Fraudulent Concealment (On Behalf of the National Class)**

97. Plaintiff incorporates by reference paragraphs 1–82 as if fully set forth herein and further alleges as follows:

98. This count is based upon Defendant's fraudulent concealment.

99. At all times relevant, Defendant misrepresented the safety and efficacy of the Dual-ended Combat Arms<sup>TM</sup> earplugs for their intended use.

100. Defendants knew or were reckless in not knowing that their representations were false.

101. In representations to Plaintiff, Defendant fraudulently concealed and intentionally omitted the following material information:

- a. that testing of the Dual-ended Combat Arms<sup>TM</sup> earplug was deliberately flawed;
- b. the amount of hearing protection provided by the Combat Arms<sup>TM</sup> earplug;
- c. that Defendant was aware of the defects in the Dual-ended Combat Arms<sup>TM</sup> earplug;
- d. that the Dual-ended Combat Arms<sup>TM</sup> earplug was defective, and would cause dangerous side effects, including but not limited to hearing damage or impairment;
- e. that the Dual-ended Combat Arms<sup>TM</sup> earplug was manufactured negligently;
- f. that the Dual-ended Combat Arms<sup>TM</sup> earplug was manufactured defectively;
- g. that the Dual-ended Combat Arms<sup>TM</sup> earplug was designed defectively;

- h. that the Dual-ended Combat Arms™ earplug was designed negligently; and,
- i. that the Dual-ended Combat Arms™ earplug was designed improperly.

102. Defendant was under a duty to disclose to Plaintiff the defective nature of the Dual-ended Combat Arms™ earplug.

103. Defendant had sole access to material facts concerning the defective nature of the product and its propensity to cause serious and dangerous side effects, and hence, cause damage to persons who used the dual-end Combat Arms™ earplug, including Plaintiff, in particular.

104. Defendant's concealment and omissions of material facts concerning, among other things, the safety and efficacy of the Dual-end Combat Arms™ earplug was made purposefully, willfully, wantonly, and/or recklessly, to mislead Plaintiff into reliance, continued use of the dual-end Combat Arms™ earplug, and actions thereon, and to cause him to purchase and/or use the product. Defendant knew that Plaintiff had no way to determine the truth behind Defendant's concealment and omissions, and that these included material omissions of facts surrounding the Dual-end Combat Arms™ earplug, as set forth herein.

105. Plaintiff reasonably relied on facts revealed which negligently, fraudulently and/or purposefully did not include facts that were concealed and/or omitted by Defendant.

106. By reason of the foregoing, Plaintiff and the members of the Class were exposed to increased risks of suffering serious and dangerous side effects including, bilateral hearing loss and tinnitus, and the injuries and damages as alleged herein.

107. As a result of Defendant's fraudulent conduct as alleged herein, Plaintiff and the members of the Class are entitled to injunctive relief, as allowed by law, from Defendant in the form of a Court-supervised, 3M-funded comprehensive medical monitoring program for Plaintiffs and the members of the Class, which would facilitate the early diagnosis and adequate treatment of brain injury for Plaintiffs and members of the Class.

**COUNT III**  
**Design Defect – Negligence**  
**(Plaintiff Brings this Count Individually)**

108. Plaintiff incorporates by reference paragraphs 1–8, 10–11, and 13–75 as if fully set forth herein and further alleges as follows:

109. At all times relevant to this action, Defendant 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™ with reasonable and due care for the safety

and well-being of U.S. military service men and women, including Plaintiff, who were subject to and used the Dual-ended Combat Arms<sup>TM</sup> earplugs during their service with the U.S. military.

110. Plaintiff was a foreseeable user of the Dual-ended Combat Arms<sup>TM</sup> earplugs and Defendant knew that the Dual-ended Combat Arms<sup>TM</sup> earplugs would be used by U.S. military service men and women, including Plaintiff.

111. The Dual-ended Combat Arms<sup>TM</sup> 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.

112. When the Dual-ended Combat Arms<sup>TM</sup> is inserted into the ear according to standard fitting instructions, a proper seal is not formed with the ear canal.

113. 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.

114. Upon information and belief, Defendant failed to exercise reasonable and due care under the circumstances and therefore breached this duty in the following ways:

- a. Defendant failed to design the Dual-ended Combat Arms<sup>TM</sup> in a manner which would result in a NRR of "22" when used with the closed, olive end inserted, according to the standard fitting instructions provided by Defendant.
- b. Defendant failed to properly and thoroughly test the Dual-ended Combat Arms<sup>TM</sup> earplugs;
- c. Defendant failed to properly and thoroughly analyze the data resulting from testing of the Dual-ended Combat Arms<sup>TM</sup> earplugs;
- d. Defendant designed, manufactured, distributed, and sold the Dual-ended Combat Arms<sup>TM</sup> earplugs without an adequate warning of the significant and dangerous risks of the earplugs;
- e. Defendant designed, manufactured, distributed, and sold the Dual-ended Combat Arms<sup>TM</sup> earplugs without providing proper instructions to avoid the harm which could foreseeably occur because of using the earplugs in the manner the Defendant's standard fitting instructions directed;



- f. Defendant failed to fulfill the standard of care required of a reasonable and prudent manufacturer of hearing protection products, specifically including products such as the Dual-ended Combat Arms<sup>TM</sup> earplugs; and
- g. Defendant negligently continued to manufacture and distribute the Dual-ended Combat Arms<sup>TM</sup> earplugs (Version 2 CAEv.2) to the U.S. military after Defendant knew or should have known of its adverse effects and/or the availability of safer designs.

115. Defendant knew or should have known that the defective condition of the Dual-ended Combat Arms<sup>TM</sup> earplugs made it unreasonably dangerous to the U.S. military service men and women who used the earplugs.

116. The Dual-ended Combat Arms<sup>TM</sup> earplugs were dangerous when used by ordinary U.S. military service men and women who used it with the knowledge common to the U.S. military as to the product's characteristics and common usage.

117. Defendant knew or should have known of the defective design at the time the Dual-ended Combat Arms<sup>TM</sup> earplugs were used by Plaintiff.

118. At the time the Dual-ended Combat Arms<sup>TM</sup> earplugs were used by Plaintiff and left the possession of Defendant, the Dual-ended Combat Arms<sup>TM</sup> earplugs were in a condition which made it unreasonably dangerous to the ordinary U.S. military service member.

119. At all relevant times, Plaintiff used the Dual-ended Combat Arms<sup>TM</sup> earplugs in the manner in which they were intended.

120. As designers, developers, manufacturers, inspectors, advertisers, distributors, and suppliers, of the Dual-ended Combat Arms<sup>TM</sup> earplugs, Defendant had superior knowledge of the Dual-ended Combat Arms<sup>TM</sup> earplugs and owed a duty of care to Plaintiff.

121. It was foreseeable that Defendant's actions, omissions, and misrepresentations would lead to severe, permanent, and debilitating injuries to the Plaintiff.

122. The Dual-ended Combat Arms<sup>TM</sup> earplugs were the proximate cause of Plaintiff's personal injuries – specifically Plaintiff's hearing loss and tinnitus. Defendant's conduct was a substantial factor in bringing about the injuries sustained by Plaintiff because 3M designed, manufactured, tested, sold, and distributed the Dual-ended Combat Arms<sup>TM</sup> earplugs to the U.S. military.

123. As a direct and proximate result of Defendant's negligence in designing the defective Dual-ended Combat Arms<sup>TM</sup> earplugs, Plaintiff was caused to sufferer serious and dangerous side effects, including hearing loss and tinnitus, and has further suffered the injuries and damages as alleged herein.

**COUNT IV**  
**Design Defect- Strict Liability**  
**(Plaintiff Brings this Count Individually)**

124. Plaintiff incorporates by reference paragraphs 1–8, 10–11, and 13–75 as if fully set forth herein and further alleges as follows:

125. Plaintiff was a foreseeable user of the Dual-ended Combat Arms<sup>TM</sup> earplugs.

126. The Dual-ended Combat Arms<sup>TM</sup> 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.

127. Defendant knew that the defective condition of the Dual-ended Combat Arms<sup>TM</sup> earplugs made it unreasonably dangerous to the U.S. military service members who used the device.

128. The Dual-ended Combat Arms<sup>TM</sup> earplugs were dangerous when used by an ordinary user who used it as it was intended to be used.

129. The Dual-ended Combat Arms<sup>TM</sup> earplugs were dangerous to an extent beyond which would be contemplated by the ordinary user who purchased the device because the design of the Dual-ended Combat Arms<sup>TM</sup> earplugs allow for dangerous sounds to bypass the plug altogether, thereby posing a serious risk to a U.S military service members' hearing unbeknownst to him or her.

130. Defendant knew of the defective design at the time the Dual-ended Combat Arms<sup>TM</sup> earplugs were provided to Plaintiff.

131. At the time the Dual-ended Combat Arms<sup>TM</sup> earplugs left Defendant's possession, the Dual-ended Combat Arms<sup>TM</sup> earplugs were defective and were in a condition which made them unreasonably dangerous to the ordinary U.S. military service member who used them.

132. At all relevant times, Plaintiff used the Dual-ended Combat Arms<sup>TM</sup> earplugs in the manner in which they were intended.

133. The Dual-ended Combat Arms<sup>TM</sup> earplugs were the proximate cause of Plaintiff's hearing loss and tinnitus because the short -stem design of the earplugs allow for dangerous sounds to bypass the plug altogether thereby posing a serious risk to Plaintiff's hearing unbeknownst to him.

134. Defendant's conduct was a substantial factor in bringing about Plaintiff's personal injuries because Defendant designed, tested, manufactured, sold, and distributed the Dual-ended Combat Arms<sup>TM</sup> earplugs that caused Plaintiff's hearing loss and tinnitus.

135. As a direct and proximate result of Defendant's design defect, Plaintiff was caused to sufferer serious and dangerous side effects, including hearing loss and tinnitus, and has further suffered the injuries and damages as alleged herein.

**COUNT V**  
**Failure to Warn—Negligence**  
**(Plaintiff Brings this Count Individually)**

136. Plaintiff incorporates by reference paragraphs 1–8, 10–11, and 13–75 as if fully set forth herein and further alleges as follows:

137. At all times relevant to this action, Defendant 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<sup>TM</sup> with reasonable and due care for the safety and well-being of U.S. military service men and women, including Plaintiff, who were subject to and used the Dual-ended Combat Arms<sup>TM</sup> earplugs during their service with the U.S. military.

138. Plaintiff was a foreseeable user of the Dual-ended Combat Arms<sup>TM</sup> earplugs.

139. The Dual-ended Combat Arms<sup>TM</sup> earplugs are defective, in part, 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.

140. The Dual-ended Combat Arms<sup>TM</sup> earplugs contained no warnings, or in the alternative, inadequate warnings and/or instructions, as to the risk that the Dual-ended Combat Arms<sup>TM</sup> earplugs would allow for dangerous sounds to bypass the plug altogether thereby posing a serious risk to Plaintiff's hearing unbeknownst to him.

141. The warnings and instructions that accompanied the Dual-ended Combat Arms<sup>TM</sup> earplugs failed to provide that level of information that an ordinary consumer would expect when using the Dual-ended Combat Arms<sup>TM</sup> earplugs in a manner reasonably foreseeable to Defendant.

142. Had Plaintiff received a proper or adequate warning as to the risks associated with the Dual-ended Combat Arms<sup>TM</sup> earplugs, he would not have used the Dual-ended Combat Arms<sup>TM</sup> earplugs.

143. The Dual-ended Combat Arms<sup>TM</sup> earplugs were the proximate cause of Plaintiff's hearing loss and tinnitus because design of the earplugs allows for dangerous sounds to bypass the plug altogether thereby posing a serious risk to Plaintiff's hearing unbeknownst to him.

144. As a direct and proximate result of Defendant's failure to warn, Plaintiff was caused to sufferer serious and dangerous side effects, including hearing loss and tinnitus, and has further suffered the injuries and damages as alleged herein.

**COUNT VI**  
**Fraudulent Concealment**  
**(Plaintiff Brings this Count Individually)**

145. Plaintiff incorporates by reference paragraphs 1–8, 10–11, and 13–75 as if fully set forth herein and further alleges as follows:

146. At all times relevant, Defendant misrepresented the safety and efficacy of the Dual-ended Combat Arms<sup>TM</sup> earplugs for their intended use.

147. Defendant knew or was reckless in not knowing that its representations were false.

148. In representations to Plaintiff, Defendant fraudulently concealed and intentionally omitted the following material information:

- a. that testing of the Dual-ended Combat Arms<sup>TM</sup> earplug was deliberately flawed;
- b. the amount of hearing protection provided by the Combat Arms<sup>TM</sup> earplug;
- c. that Defendant was aware of the defects in the Dual-ended Combat Arms<sup>TM</sup> earplug;
- d. that the Dual-ended Combat Arms<sup>TM</sup> earplug was defective, and would cause dangerous side effects, including but not limited to hearing damage or impairment;
- e. that the Dual-ended Combat Arms<sup>TM</sup> earplug was manufactured negligently;
- f. that the Dual-ended Combat Arms<sup>TM</sup> earplug was manufactured defectively;
- g. that the Dual-ended Combat Arms<sup>TM</sup> earplug was designed defectively;

- h. that the Dual-ended Combat Arms™ earplug was designed negligently; and,
- i. that the Dual-ended Combat Arms™ earplug was designed improperly.

149. Defendant was under a duty to disclose to Plaintiff the defective nature of the dual-end Combat Arms™ earplug.

150. Defendant had sole access to material facts concerning the defective nature of the product and its propensity to cause serious and dangerous side effects, and hence, cause damage to persons who used the dual-end Combat Arms™ earplug, including Plaintiff, in particular.

151. Defendant's concealment and omissions of material facts concerning, *inter alia*, the safety and efficacy of the Dual-end Combat Arms™ earplug was made purposefully, willfully, wantonly, and/or recklessly, to mislead Plaintiff into reliance, continued use of the dual-end Combat Arms™ earplug, and actions thereon, and to cause him to purchase and/or use the product. Defendant knew that Plaintiff had no way to determine the truth behind Defendant's concealment and omissions, and that these included material omissions of facts surrounding the Dual-end Combat Arms™ earplug, as set forth herein.

152. Plaintiff reasonably relied on facts revealed which negligently, fraudulently and/or purposefully did not include facts that were concealed and/or omitted by Defendant.

153. By reason of the foregoing, Plaintiff was caused to sufferer serious and dangerous side effects including, hearing loss and tinnitus, and has further suffered the injuries and damages as alleged herein.

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

154. Plaintiff on his own behalf, and on behalf of the proposed class, filed this lawsuit within the applicable limitations period of first suspecting that the Dual-ended Combat Arms™ earplugs caused his injuries. Plaintiff could not, by the exercise of reasonable diligence, have discovered the wrongful cause of the Dual-ended Combat Arms™ earplugs-induced 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.

155. Furthermore, the running of any statute of limitations or repose has been tolled by reason of Defendant's fraudulent concealment, including but not limited to through Defendant's affirmative misrepresentations and omissions and Defendant's failure to disclose known but non-

public information about the defective nature of the Dual-ended Combat Arms™ earplug—information over which it had exclusive control, as set forth herein.

156. Furthermore, Defendant is equitably estopped from relying on any statutes of limitation or repose by reason of Defendant's active concealment, including but not limited to through Defendant's affirmative misrepresentations and omissions and Defendant's failure to disclose known but non-public information about the defective nature of the Dual-ended Combat Arms™ earplug – information over which it had exclusive control, as set forth herein.

157. Furthermore, any running of any statute of limitations or repose has been equitably tolled by reason of Defendant's active concealment, including but not limited to through Defendant's affirmative misrepresentations and omissions and Defendant's failure to disclose known but non-public information about the defective nature of the Dual-ended Combat Arms™ earplug—information over which it had exclusive control, as set forth herein.

158. As a result of Defendant's actions, Plaintiff was unaware, and could not reasonably know or have learned through reasonable diligence that the Plaintiff 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.

159. Through Defendant's affirmative misrepresentations and omissions pertaining to the safety and efficacy of the Dual-ended Combat Arms™ earplugs, Plaintiff was prevented from discovering this information sooner because Defendant herein misrepresented and continued to misrepresent the defective nature of the Dual-ended Combat Arms™ earplugs.

160. Additionally, pursuant to 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.

#### **JURY DEMAND**

Plaintiff hereby demands a trial by jury as to all claims in this action so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays as follows:

1. As to Counts I and II, certifying the National Class proposed in this Complaint pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;
2. With respect to Counts I and II, awarding Plaintiff and Class members their costs and disbursements in this action, including reasonable attorneys' fees, to the extent permitted by law;
3. As to the remaining Counts, that there be judgment in favor of Plaintiff and against Defendant for the damages set forth below, along with court costs, pre-judgment and post-judgment interest at the legal rate; including but not limited to:
  - a. Pain and suffering (past and future);
  - b. Wage loss (past and future);
  - c. Loss of earnings and loss of earning capacity;
  - d. Medical expenses (past and future);
  - e. Loss of enjoyment of life (past and future);
  - f. Mental anguish and distress (past and future);
  - g. Disfigurement (past and future);
  - h. Physical impairment (past and future);
  - i. Attorney's fees;
  - j. Punitive or exemplary damages in such amounts as may be proven at trial and as permitted by law; and
4. For all such other relief as to which Plaintiff may show himself justly entitled.
5. With respect to all counts, granting Plaintiff and Class members such other and further relief as this Court deems just, equitable, and proper.



**DEMAND FOR JURY TRIAL**

Plaintiff and Class members demand a jury trial on all matters so triable.

Dated: March 21, 2019.

Respectfully submitted,

By: /s/ Adam M. Moskowitz

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*Attorneys for Plaintiff and the Class*

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

**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.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

**I. (a) PLAINTIFFS** Jonathan N. Dufresne-Yidi**DEFENDANTS** 3M Company

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

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

**(c)** Attorneys (Firm Name, Address, and Telephone Number)

The Moskowitz Law Firm, PLLC; 2 Alhambra Plaza, Suite 601  
Coral Gables, FL 33134; Tel: (305) 740-1423

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.  
Attorneys (If Known)

**(d)** Check County Where Action Arose: ☐ MIAMI-DADE ☐ MONROE ☒ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

**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)

- Citizen of This State ☒ PTF 1 ☐ DEF 1 Incorporated or Principal Place of Business In This State ☐ PTF 4 ☐ DEF 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)Click here for: [Nature of Suit Code Descriptions](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability			<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander			<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine			<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle			<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice			<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
	<b>PRISONER PETITIONS</b>			<input type="checkbox"/> 891 Agricultural Acts
	<b>Habeas Corpus:</b>			<input type="checkbox"/> 893 Environmental Matters
	<input type="checkbox"/> 440 Other Civil Rights			<input type="checkbox"/> 895 Freedom of Information Act
	<input type="checkbox"/> 441 Voting			<input type="checkbox"/> 896 Arbitration
	<input type="checkbox"/> 442 Employment			<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
	<input type="checkbox"/> 443 Housing/Accommodations			<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment			
	<input type="checkbox"/> 446 Amer. w/Disabilities - Other			
	<input type="checkbox"/> 448 Education			
	<b>Other:</b>			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<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			
		<b>IMMIGRATION</b>		
		<input type="checkbox"/> 462 Naturalization Application		
		<input type="checkbox"/> 465 Other Immigration Actions		
			<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	

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

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed (See VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation Transfer ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Multidistrict Litigation - Direct File ☐ 9 Remanded from Appellate Court

**VI. RELATED/RE-FILED CASE(S)**(See instructions): a) Re-filed Case ☐ YES ☒ NOb) Related Cases ☐ YES ☒ NO**JUDGE:****DOCKET NUMBER:****VII. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):  
Class Claims for Medical Monitoring and Individual Claims for Product Liability and Personal Injury

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:**☒ Yes ☐ No

ABOVE INFORMATION IS TRUE &amp; CORRECT TO THE BEST OF MY KNOWLEDGE

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

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.C.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; 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.** 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.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

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.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. 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

**VIII. 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 dollar amount (in thousands of dollars) 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.

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





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: