UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

DUSTIN FITZPATRICK AND REYNALDO PADILLA)
Plaintiffs,)
)
V.)
)
3M COMPANY, AEARO HOLDING LLC, AEARO TECHNOLOGIES, LLC, AEARO INTERMEDIATE, LLC, AEARO, LLC)
Defendants.) JUNE 12, 2019

COMPLAINT

INTRODUCTION

1. This case arises out of a multi-year, multi-million dollar fraud that 3M perpetrated on the United States Government and the men and women who served in the United States Armed Forces ("USAF"). From approximately 2003 through 2015, 3M sold to the USAF tens of thousands of dual-ended Combat Arms Earplugs, version 2 ("Combat Arms Earplugs") which 3M falsely represented as meeting the military's specifications, including that they were suitable for use as hearing protection for military personnel and that they were free from all defects that impair their serviceability. All the while, 3M knew the Combat Arms Earplugs were defective and would expose service members to the extremely dangerous and disabling noise the Combat Arms Earplugs

were supposed to protect against. 3M settled a False Claims Act lawsuit with the United States Government for over $9 million, but 3M has yet to remedy the harm it caused to the tens of thousands of service members injured by the Combat Arms Earplugs. To this day, 3M has failed to issue a recall for the defective Combat Arms Earplugs, opting rather to discontinue selling the earplugs, leading to further injury of USAF members. In this case, Plaintiff Jonathan Frew seeks damages for his injuries caused by 3M's defective Combat Arms Earplugs during his military service.

PARTIES

2. Plaintiff, Dustin FitzPatrick, is a natural person whose permanent address is in Portland, Connecticut.

3. Plaintiff, Reynaldo Padilla, is a natural person whose permanent address is in Waterbury, Connecticut.

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

5. Defendant Aearo Holding LLC ("AHC") is a Delaware limited liability company with its principal place of business in St. Paul, Minnesota. It was formerly known as Aearo Holding Corp. It is a wholly owned subsidiary of 3M Company.

6. Defendant Aearo Technologies LLC ("ATL") is a Delaware limited liability company with its principal place of business in St Paul, Minnesota. It is a subsidiary of Aearo Holding LLC and 3M Company, and has operated under the assumed business

names "Aearo Company" and "Aearo Technologies ."

7. Defendant Aearo Intermediate LLC ("ATI") is a Delaware limited liability company with its principal place of business in Indianapolis, Indiana. It was formerly known as Aearo Technologies, Inc. It is a subsidiary of Aearo Holding LLC and 3M Company.

8. Defendant Aearo LLC ("AL") is a Delaware limited liability company with its principal place of business in Indianapolis, Indiana. It is a subsidiary of Aearo Holding LLC and 3M Company.

9. In 2008, 3M Company acquired Aearo Holding LLC and the Combat Arms brand, and began marketing the Combat Arms Earplugs under the 3M brand name. Plaintiff therefore believes that 3M Company is the successor-in-interest to all rights, liabilities, and obligations the Aearo entities had with respect to the Combat Arms Earplugs, and/or works in tandem with each of the Aearo entities to jointly develop and market the Combat Arms Earplugs from 3M Company's headquarters in St. Paul, Minnesota. Plaintiff refers to the defendants individually and collectively as "3M" throughout this Complaint.

JURISDICTION

10. This Court has jurisdiction pursuant to 28 U.S.C. §1332(a)(1) because the Plaintiff and the Defendants are citizens of different states and the amount in controversy exceeds $75,000, excluding interest and costs.

VENUE

11. Venue is proper in this District under 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the claims occurred in and/or emanated from this District.

FACTUAL ALLEGATIONS

THE COMBAT ARMS EARPLUGS

12. This case concerns 3M's Dual-Ended Combat Arms Earplugs, version 2 (the "Combat Arms Earplugs"). As its name conveys, the product is supposed to be combat ready, purporting to protect USAF service men and women from damaging and disabling noise during combat and other military missions, with each end of the plug providing a different kind of protection.

13. The "open" yellow end is supposed to afford the service member "situational awareness" by protecting against the disorienting effects of loud impulse

noises such as improvised explosive devices ("IEDs") and gun fire, yet still allow the service member to hear low-level noises critical to mission safety such as commands, footsteps and encroaching enemies.

14. The "closed" dark green end is supposed to work like traditional earplugs and block or dampen all noise.

15. 3M (through its predecessor-in-interest ATI and/or AHC) began selling hundreds of thousands of Combat Arms Earplugs to the United States military in or around 2003. Starting in 2003 and continuing through 2015, Combat Arms Earplugs were issued to all deploying USAF service members. 3M (including through its predecessors-in-interest Aearo Company and/or Aearo Technologies, Inc.) was the exclusive manufacturer and supplier of the Combat Arms Earplugs.

THE USAF'S REQUIREMENTS FOR THE COMBAT ARMS EARPLUGS

16. The United States military procured the Combat Arms Earplugs through a standard requisition process. The military issued solicitations that provided the minimum requirements the earplugs had to meet, and these became contractual requirements when 3M (ATL prior to 2008) was awarded the contract.

17. In particular, the solicitations required that the earplugs be "suitable for

use as hearing protectors for military personnel in chronically noisy environments," and further required, among other things, that the earplugs meet the following "salient characteristics":

a. That the "[e]ar 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";

b. That each side of each earplug reduce sound by prescribed decibel levels:

i. the green end was required to reduce sound 25-40 decibels (depending on the frequency of the sound), and

ii. the yellow end was required to reduce sound 0-25 decibels (depending on the frequency of the sound);

c. That the ability of the earplugs to reduce sound be tested in accordance with **ANSI** S3.19;1

d. That "[t]he ear plugs shall be free from all defects that detract from their appearance or impair their serviceability"; and

e. That "[i]llustrated instructions explaining the proper use and handling of the ear plugs shall be supplied with each unit."

18. The solicitations further required 3M to inspect and test each earplug to ensure that each one met all of the "salient characteristics."

19. But the Combat Arms Earplugs 3M supplied did not meet these requirements, and 3M (ATL/ATI/AHC) knew it at the time of sale.

20. In 2000, years before 3M began supplying the USAF with the Combat Arms Earplugs on a large scale, 3M's (ATI/ATUAHC's) internal testing revealed that the Combat Arms Earplugs were dangerously defective.

3M'S SHAM TESTING OF THE COMBAT ARMS EARPLUGS

21. Environmental Protection Agency ("EPA") regulations, 40 C.F.R. § 211.201 et seq., which were promulgated under the Noise Control Act, 42 U.S.C. § 4901, et seq., require manufacturers like 3M to test and label the Noise Reduction Rating ("NRR") of hearing protection devices like the Combat Arms Earplugs.

22. 3M (ATI at the time) did not commission an independent lab to conduct the testing on the Combat Arms Earplugs as federal law and the military solicitations required. Rather, 3M purported to conduct the testing in house, and it was a sham.

23. ATI conducted the test on ATI employees and, after testing the earplugs on 8 of the 10 test subjects, the NRR test results turned out to be so far below what ATI expected for the "closed" green end of the earplugs that ATI stopped all further testing on the green end. It did, however, continue to test the "open" yellow end on all the test subjects. Such testing resulted in a -2 NRR for the "open" yellow end of the earplugs.

24. 3M reported the -2 NRR test report as an NRR of "0," and disclosed it on

the Combat Arms Earplug's packaging and marketing materials.

25. ATI also launched an investigation into why the "closed" green end of the earplugs failed during the testing. It discovered that the earplugs were defective.

26. First, ATI discovered that because the Combat Arms Earplugs are so short, it is difficult to insert the earplug deep enough into the ear to achieve a proper fit.

27. Second, ATI discovered that the flanges on one side of the plug interfered with the proper fit of the other side of the plug. For example, when the green side of the plug is inserted and pressed into the ear, per the instructions provided by 3M, the flanges on the yellow side of the plug are compressed against the ear. Once the pressure used to insert the plug is removed, the yellow flanges will naturally tend to spring back or straighten out to return to their original shape, which causes the earplug to dislodge from the ear in a manner that is imperceptible to the wearer.

28. These defects would have been even more pronounced when used for their intended purpose (military missions) than in a laboratory setting because service members wearing them in the field were more active, and the ear plugs would have been more likely to dislodge.

29. ATI conducted another round of testing, in or around February 2000, this time testing the "closed" green end of the earplugs by inserting them with the yellow

side's flanges folded back, and making sure the plugs were inserted deeply into the ear. Because the yellow flanges were folded back (instead of compressed against the ear), they no longer had a tendency to move back into their normal position, and thus did not create the pressure that would dislodge the green end of the plugs out of the ear. This test resulted in a NRR of 22, a far more desirable result than ATI's previous testing that is reported on the Combat Arms Earplugs packaging for the "closed" green end of the plug.

30. Because the yellow and green ends of the Combat Arms Earplugs are symmetrical, both sides of the plug had the same problems achieving a proper fit and had a tendency to dislodge from the ear. Therefore, ATI's failure during the January 2000 testing to fold back the flanges on the green side of the plugs when testing the "open" yellow side of the plugs, likely led to unreliable results in that previous round of testing.

31. Nevertheless, ATI did not go back and retest the yellow side of the Combat Arms Earplugs by folding back the flanges on the "closed" green side.

32. Rather, 3M (including ATI) used the results of these two tests to report a NRR of "0" for the "open" yellow side of the plugs, and a NRR of "22" for the "closed," green side of the plugs, through 2015.

3M DID NOT REMEDY THE KNOWN DEFECTS IN THE COMBAT ARMS EARPLUGS PRIOR TO SALE TO THE USAF

33. Despite the lessons 3M (including ATI) learned in 2000, 3M did not remedy the Combat Arms Earplug's known defects. For example, 3M did not enlarge or lengthen the Combat Arms Earplugs to insure a deeper, more secure fit, and 3M did not increase the space between the yellow and green flanges to prevent one side interfering with the operation of the other. 3M did not take these or any other steps to correct the design defects it discovered in 2000.

34. 3M failed to include adequate instructions and illustrations explaining the proper use and handling necessary to achieve the advertised and warranted results.

35. 3M (including ATI) also did not warn Plaintiff that the Combat Arms Earplugs are defective, and can achieve the NRR testing results it represented only if the Combat Arms Earplugs are firmly secured into the ear with the flanges on the opposite end of the plugs folded back. Nor did 3M take any other steps to adequately warn Plaintiff of the defects in the product.

36. 3M (including ATI) knew that such warnings were necessary because its own testing, on its own employees, revealed the defects.

37. Instead, 3M sold hundreds of thousands of Combat Arms Earplugs to the

USAF that 3M knew were defective and did not meet the USAF's requirements.

3M SETTLES A FALSE CLAIMS ACT ACTION

38. In July 2018, 3M agreed to pay $9.1 million to settle a qui tam action brought against 3M on behalf of the United States Government for certain of the conduct alleged in this case. See United States of America ex rel. Moldex-Metric, Inc. v. 3M Company, Case No. 3:16-133-MBS (D.S.C.), ECF No. 23-1.2

39. But 3M has done nothing to remedy the harm it caused to the hundreds of thousands of USAF service members injured by 3M's defective Combat Arms Earplugs, including failing to recall the defective and dangerous Combat Arms Earplugs.

AS TO PLAINTIFF, DUSTIN FITZPATRICK

40. The Plaintiff joined the United States Marine Corps (USMC) in 2009 at the age of 22.

41. Prior to joining the military, Plaintiff had never suffered from or been diagnosed with tinnitus or hearing loss.

42. At the time of Plaintiffs service, the Combat Arms Earplugs were standard issue.

43. Plaintiff was issued and used the Combat Arms Earplugs when firing weapons and around other large noises throughout his service, including while stationed at bases located in Dijibouti, Africa. He was an Infantry Machine Gunner.

44. Plaintiff wore the Combat Arms Earplugs in accordance with 3M's instructions.

45. Plaintiff was never instructed to fold back the flanges of the earplug opposite of the side Plaintiff inserted into his ear canal.

46. Since using the Combat Arms Earplugs, Plaintiff has been diagnosed with bilateral hearing loss and tinnitus.

AS TO PLAINTIFF, REYNALDO PADILLA

47. The Plaintiff joined the United States Marine Corps (USMC) in 2011 at the age of 20.

48. Prior to joining the military, Plaintiff had never suffered from or been diagnosed with tinnitus or hearing loss.

49. At the time of Plaintiffs service, the Combat Arms Earplugs were standard issue.

50. Plaintiff was issued and used the Combat Arms Earplugs when firing weapons and around other large noises throughout his service, including while stationed at bases located in Japan and Thailand. He was involved with Field Artillery and Cannons.

51. Plaintiff wore the Combat Arms Earplugs in accordance with 3M's instructions.

52. Plaintiff was never instructed to fold back the flanges of the earplug opposite of the side Plaintiff inserted into his ear canal.

53. Since using the Combat Arms Earplugs, Plaintiff has been diagnosed with bilateral hearing loss and tinnitus.

TOLLING OF STATUTE OF LIMITATIONS

54. Under the Servicemembers Civil Relief Act, the statute of limitations is tolled during the period of Plaintiffs military service. See 50 U.S.C. § 3936.

55. The statute of limitations is also tolled because Plaintiff did not, and could not through the exercise of reasonable diligence, have learned of the causal connection

between his injury and 3M's product, act or omission.

56. The statute of limitations is also tolled because 3M (including ATI) actively concealed their sham testing, falsely represented the efficacy of the earplugs, failed to disclose that the flanges on the opposing end had to be folded back for the earplugs to be effective, and failed to disclose that the earplugs are defective.

CAUSES OF ACTION AS TO DUSTIN FITZPATRICK

Count 1: Strict Product Liability-Design Defect

57. Plaintiff incorporates the paragraphs above as if fully set forth herein.

58. 3M is the manufacturer and supplier of the Combat Arms Earplugs.

59. 3M has a duty of care to refrain from selling or distributing defectively designed products, i.e. products that present an unreasonable risk of harm to potential users when used in a reasonably foreseeable manner.

60. At the time the Combat Arms Earplugs left 3M's control, they were defectively designed in that their design failed to prevent harmful sounds from entering Plaintiff's ear canal during reasonably anticipated military activity, which was the specific purpose of the earplugs.

61. The Combat Arms Earplugs were further defective in that 3M failed to

meet the specifications required to prevent harmful sounds from entering the ear canal under conditions likely to occur in military service and during combat.

62. 3M falsely certified to the United States Government that the Combat Arms Earplugs complied with such specifications.

63. Harmful sounds such as those permitted by the Combat Arms Earplugs can cause hearing loss and tinnitus when the Combat Arms Earplugs are used in their expected and ordinary manner.

64. As a result of their defective design, the Combat Arms Earplugs were unreasonably dangerous and unfit for their intended or expected use.

65. The defective Combat Arms Earplugs used by Plaintiff were defective when they left the Defendants' control and were provided to Plaintiff without any change in their condition and were used by Plaintiff in the intended and expected manner.

66. Defendants knew or should have known of the defect in the Combat Arms Earplugs.

67. Defendants breached their duty of care to the Plaintiff to provide non-defectively designed earplugs.

68. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of the use of the defectively designed

Combat Arms Earplugs in their intended and expected manner.

69. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

70. As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

71. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many life activities.

Count 2: Strict Product Liability-Failure to Warn

72. Plaintiff incorporates the paragraphs above as if fully set forth herein.

73. Defendants are the manufacturer and supplier of the Combat Arms Earplug.

74. Defendants have a duty to warn foreseeable users of a dangerous product if it is reasonably foreseeable that an injury could occur from its use.

75. The Combat Arms Earplugs was a dangerous product in that it did not prevent harmful sounds from entering the ear canal of Plaintiff and those similarly situated.

76. Plaintiff and those similarly situated would reasonably expect the Combat Arms Earplugs to prevent such harmful sounds from entering their ear canals and would reasonably expect proper warning or instructions to prevent such harm.

77. The Combat Arms Earplugs did not come with adequate warnings or instructions to cause the earplugs to prevent the harmful sounds from entering Plaintiff's ear canal when used in their intended and expected manner.

78. It was foreseeable to 3M that the Combat Arms Earplugs would be unreasonably dangerous if an adequate warning or instructions was not provided.

79. In fact, 3M knew that the Combat Arms Earplugs would be unreasonably dangerous if an adequate warning/instructions was not provided because its own testing indicated that the Combat Arms Earplug, as designed, would not prevent harmful sounds from entering the ear canal of Plaintiff and those similarly situated.

80. 3M further knew that without modified fitting instructions, which it never

provided to users of the Combat Arms Earplug, the Combat Arms Earplugs could not prevent harmful sounds from entering the ear canal.

81. Such harmful sounds can cause hearing loss and tinnitus when the Combat Arms Earplugs are used in their expected and ordinary manner.

82. Had Plaintiff received a proper warning or instructions, Plaintiff would have not used the earplugs and would have used an alternative device or would have followed any instructions that would have prevented the Combat Arms Earplugs from permitting harmful sounds from entering the ear canal.

83. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of Defendants' failure to provide a proper warning or proper instructions.

84. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

85. As a further result of said injuries and damages, his military career and

employment opportunities will be adversely affected throughout his life which will cause him economic losses.

86. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many life activities.

Count 3: Product Liability- Post-Sale Warning

87. Plaintiff incorporates the paragraphs above as if fully set forth herein

88. 3M is the manufacturer and supplier of the Combat Arms Earplug.

89. 3M has a duty to provide a post-sale warning or instructions to foreseeable users of a dangerous product if it is reasonably foreseeable that an injury could occur from its use.

90. The Combat Arms Earplugs was a dangerous product in that it did not prevent harmful sounds from entering the ear canal of Plaintiff and those similarly situated during its normal and expected use.

91. Plaintiff and those similarly situated would reasonably expect the Combat Arms Earplugs to prevent such harmful sounds from entering their ear canals and would reasonably expect proper post-sale warning or instructions to prevent such harm.

92. The Combat Arms Earplugs did not come with adequate warnings or instructions to cause the earplugs to prevent the harmful sounds from entering the Plaintiff's ear canal when used in their intended and expected manner, nor was any post-sale warning or instructions provided.

93. It was foreseeable to 3M that the Combat Arms Earplugs would be unreasonably dangerous if an adequate post-sale warning was not provided.

94. In fact, 3M knew that the Combat Arms Earplugs would be unreasonably dangerous if adequate post-sale warning or instructions were not provided because its own testing indicated that the Combat Arms Earplugs, as designed, would not prevent harmful sounds from entering the ear canal of Plaintiff and those similarly situated.

95. 3M further knew that without modified fitting instructions, which it never provided to users of the Combat Arms Earplugs, the Combat Arms Earplugs could not prevent harmful sounds from entering the ear canal.

96. Such harmful sounds can cause hearing loss and tinnitus when the Combat Arms Earplugs are used in their expected and ordinary manner.

97. The Combat Arms Earplugs continue to pose a substantial and dangerous risk of harm from the time of sale up to the present.

98. Service members, such as Plaintiff, who used the Combat Arms Earplugs

would have remained unaware of the risk due to its subtle and imperceptible nature.

99. Post-sale warnings were feasible and could have been effectively communicated to users such as Plaintiff.

100. Had such post-sale warnings or instructions been provided, Plaintiff would have not used the Combat Arms Earplugs and would have used an alternative device or would have followed any instructions that would have prevented the Combat Arms Earplugs from permitting harmful sounds from entering the ear canal.

101. The risk of harm in failing to provide a post-sale warning or instructions greatly exceeded the cost of providing them.

102. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's failure to provide a proper post-sale warning or proper post-sale instructions.

103. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

104. As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

105. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many lite activities.

Count 4: Negligence Per Se

106. Plaintiff incorporates the paragraphs above as if fully set forth herein.

107. Federal law requires manufacturers of all hearing protective devices to comply with testing and labeling requirements promulgated by the EPA. See 42 U.S.C. § 4901, et seq; 40 C.F.R. § 211.201, et seq.

108. 3M was required fo test and label the Combat Arms Earplugs in accordance with this federal law.

109. 3M violated these statutes and regulations-and therefore breached the standard of care--by failing to test and label the Combat Arms Earplugs in accordance with these requirements. In particular, 3M's sham NRR testing, false statements regarding the efficacy of the Combat Arms Earplugs, and failure to disclose that the

wearer must fold back the flanges on the opposing end of the earplug violated this federal law.

110. Plaintiff is within the intended protection of these federal laws and his injury is of the type the legislation was intended to prevent.

111. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's failure to comply with these provisions.

112. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

113. As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

114. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of

many life activities.

Count 5: Breach of Express Warranty

115. Plaintiff incorporates the paragraphs above as if fully set forth herein.

116. 3M expressly warranted, through its certifications to the military that:

a. The Combat Arms Earplugs were 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;

b. The green end of the Combat Arms Earplugs reduced sound 25-40 decibels (depending on the frequency of the sound);

c. The efficacy of the Combat Arms Earplugs were tested in accordance with **ANSI** S3.19; and

d. The Combat Arms Earplugs are free from all defects that detract from their appearance or impair their serviceability.

117. In addition, the packaging and instructions for the Combat Arms Earplugs:

a. State that they allow wearers to hear low-level sounds critical to mission safety and, "when needed, the plugs' 'filter' reacts to provide instant protection from high-level noises. It's that easy. It's that quick."

b. Provide sound attenuation data for each side of the earplugs.

118. Each of these representations was part of the basis of the bargain for the procurement of the Combat Arms Earplugs.

119. But the actual Combat Arms Earplugs Plaintiff used did not conform to any of these warranties.

120. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's breach of these express warranties.

121. As a result of said injuries, the Plaintiff has been and will be required to wear hearin!J aides and he will incur substantial expenses for medical care and treatment for-the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

122. As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

123. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many life activities.

Count 6: Breach of Implied Warranty

124. Plaintiff incorporates the paragraphs above as if fully set forth herein.

125. 3M is a merchant of the Combat Arms Earplugs and similar hearing protection devices.

126. 3M knew or had reason to know the particular purpose the Combat Arms Earplugs were being used for .

127. . · 3M knew or had reason to know the buyer would rely on 3M's skill and judgment in selecting or providing goods suitable for that purpose.

128. Plaintiff relied on 3M's skill or judgment in selecting or providing the Combat Arms Earplugs suitable for that purpose.

129. The law implies that the seller warrants or guarantees that the purchased goods:

a. Would pass without objection in the trade under the contract description;

b. Are fit for the ordinary purposes for which the goods are used;

c. Are adequately contained, packaged, and labeled as required in the agreement; and

d. Conform to the promises or stated facts on the container or label.

130. 3M breached these implied warranties by delivering a defective product

that did not work as it was designed to do-it did not protect Plaintiffs hearing, it did not conform the USAF's specification and requirements for the product, it did not provide proper instructions on how to ensure that the earplugs would perform well, and it did not conform to the representations stated on the product's label.

131. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's breach of these implied warranties.

132. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

133. As a further result of said injuries arid damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

134. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of

many life activities.

Count 7: Fraudulent Misrepresentation

135. Plaintiff incorporates paragraphs 1-57 above as if fully set forth herein.

136. 3M falsely represented that the Combat Arms Earplugs would protect military service members hearing from loud and destructive noises and had the specific Noise Reduction Ratings disclosed on the package and/or labeling.

137. M knew this information was false because its own testing had revealed that the Combat Arms Earplugs were defective, and would not achieve the specific NRR advertised, when used in the instructed manner.

138. 3M provided no warning or instructions that Plaintiff had to fold back the flanges on the opposite end of the plugs to achieve a proper fit to seal out the ambient noise.

139. Plaintiff reasonably relied on 3M's false misrepresentations and omissions.

140. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's fraudulent misrepresentations.

141. As a result of said injuries, the Plaintiff will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

142. As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

143. As a further result of said injuries his hearing loss will likely continue to

deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many life activities.

Count 8: Fraudulent Concealment

144. Plaintiff incorporates paragraphs 1-57 above as if fully set forth herein.

145. 3M fraudulently concealed the following material information:

146. That the Combat Arms Earplugs were defective;

147. That the Combat Arms Earplugs, due to a design defect, had a tendency to dislodge from the ear, rendering them ineffective at protecting the service member's hearing;

148. That the flanges on the opposite end of the earplug had to be folded back to prevent the earplug from dislodging during use; and

149. That 3M's NRR testing of the Combat Arms Earplugs was a sham.

150. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's fraudulent concealment.

151. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

152. As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

153. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many life activities.

Count 9: Negligent Misrepresentation

154. Plaintiff incorporates paragraphs 1-57 above as if fully set forth herein.

155. 3M, in the course of its business, supplied false information that the Combat Arms Earplugs were free of defects, would protect Plaintiff from loud noises, and had specific NRR ratings.

156. 3M supplied this false information to induce the purchase and use of the Combat Arms Earplugs as part of Plaintiffs military service.

157. 3M failed to use reasonable care or competence in communicating these false statements to Plaintiff.

158. The USAF and Plaintiff justifiably relied on the information because they had no reason to suspect that 3M was providing inaccurate information and had no way of discovering the truth for themselves.

159. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's negligent misrepresentation.

160. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

161. As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

162. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many life activities.

Count 10: Punitive Damages

163. Plaintiff incorporates the paragraphs above as if fully set forth herein.

164. Because 3M's actions were deliberate and willful, and because 3M acted with deliberate indifference to the rights and safety of Plaintiff and thousands of other USAF service members, punitive damages should be awarded.

CAUSES OF ACTION AS TO REYNALDO PADILLA

Count 1: Strict Product Liability-Design Defect

Plaintiffs incorporates paragraphs 1-57 above as if fully set forth herein.

58. 3M is the manufacturer and supplier of the Combat Arms Earplugs.

59. 3M has a duty of care to refrain from selling or distributing defectively designed products, i.e. products that present an unreasonable risk of harm to potential users when used in a reasonably foreseeable manner.

60. At the time the Combat Arms Earplugs left 3M's control, they were defectively designed in that their design failed to prevent harmful sounds from entering Plaintiff's ear canal during reasonably anticipated military activity, which was the specific purpose of the earplugs.

61. The Combat Arms Earplugs were further defective in that 3M failed to meet the specifications required to prevent harmful sounds from entering the ear canal under conditions likely to occur in military service and during combat.

62. 3M falsely certified to the United States Government that the Combat Arms Earplugs complied with such specifications.

63. Harmful sounds such as those permitted by the Combat Arms Earplugs can cause hearing loss and tinnitus when the Combat Arms Earplugs are used in their expected and ordinary manner.

64. As a result of their defective design, the Combat Arms Earplugs were unreasonably dangerous and unfit for their intended or expected use.

65. The defective Combat Arms Earplugs used by Plaintiff were defective when they left the Defendants' control and were provided to Plaintiff without any change in their condition and were used by Plaintiff in the intended and expected manner.

66. Defendants knew or should have known of the defect in the Combat Arms Earplugs.

67. Defendants breached their duty of care tothe Plaintiff to provide non-defectively designed earplugs.

68. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of the use of the defectively designed Combat Arms Earplugs in their intended and expected manner.

69. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

70. As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

71. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many life activities.

Count 2: Strict Product Liability-Failure to Warn

72. Plaintiff incorporates paragraphs 1 through 57 above as if fully set forth herein.

73. Defendants are the manufacturer and supplier of the Combat Arms Earplug.

74. Defendants have a duty to warn foreseeable users of a dangerous product if it is reasonably foreseeable that an injury could occur from its use.

75. The Combat Arms Earplugs was a dangerous product in that it did not prevent harmful sounds from entering the ear canal of Plaintiff and those similarly situated.

76. Plaintiff and those similarly situated would reasonably expect the Combat Arms Earplugs to prevent such harmful sounds from entering their ear canals and would reasonably expect proper warning or instructions to prevent such harm.

77. The Combat Arms Earplugs did not come with adequate warnings or instructions to cause

the earplugs to prevent the harmful sounds from entering Plaintiff's ear canal when used in their intended and expected manner.

78. It was foreseeable to 3M that the Combat Arms Earplugs would be unreasonably dangerous if an adequate warning or instructions was not provided.

79. In fact, 3M knew that the Combat Arms Earplugs would be unreasonably dangerous if an adequate warning/instructions was not provided because its own testing indicated that the Combat Arms Earplug, as designed, would not prevent harmful sounds from entering the ear canal of Plaintiff and those similarly situated.

80. 3M further knew that without modified fitting instructions, which it never provided to users of the Combat Arms Earplug, the Combat Arms Earplugs could not prevent harmful sounds from entering the ear canal.

81. Such harmful sounds can cause hearing loss and tinnitus when the Combat Arms Earplugs are used in their expected and ordinary manner.

82. Had Plaintiff received a proper warning or instructions, Plaintiff would have not used the earplugs and would have used an alternative device or would have followed any instructions that would have prevented the Combat Arms Earplugs from permitting harmful sounds from entering the ear canal.

83. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of Defendants' failure to provide a proper warning or proper instructions.

84. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

85. As a further result of said injuries and damages, his military career aNemployment opportunities will be adversely affected throughout his life which will cause him economic losses.

86. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many life activities.

Count 3: Product Liability- Post-Sale Warning

87. Plaintiff incorporates paragraphs 1-57 above as if fully set forth herein

88. 3M is the manufacturer and supplier of the Combat Arms Earplug.

89. 3M has a duty to provide a post-sale warning or instructions to foreseeable users of a dangerous product if it is reasonably foreseeable that an injury could occur from its use.

90. The Combat Arms Earplugs was a dangerous product in that it did not prevent harmful sounds from entering the ear canal of Plaintiff and those similarly situated during its normal and expected use.

91. Plaintiff and those similarly situated would reasonably expect the Combat Arms Earplugs to prevent such harmful sounds from entering their ear canals and would reasonably expect proper post-sale warning or instructions to prevent such harm.

92. The Combat Arms Earplugs did not come with adequate warnings or instructions to cause the earplugs to prevent the harmful sounds from entering the Plaintiff's ear canal when used in their intended and expected manner, nor was any post-sale warning or instructions provided.

93. It was foreseeable to 3M that the Combat Arms Earplugs would be unreasonably dangerous if an adequate post-sale warning was not provided.

94. In fact, 3M knew that the Combat Arms Earplugs would be unreasonably dangerous if adequate post-sale warning or instructions were not provided because its own testing indicated that the Combat Arms Earplugs, as designed, would not prevent harmful sounds from entering the ear canal of Plaintiff and those similarly situated.

95. 3M further knew that without modified fitting instructions, which it never provided to users of the Combat Arms Earplugs, the Combat Arms Earplugs could not prevent harmful sounds from entering the ear canal.

96. Such harmful sounds can cause hearing loss and tinnitus when the Combat Arms Earplugs are used in their expected and ordinary manner.

97. The Combat Arms Earplugs continue to pose a substantial and dangerous risk of harm from the time of sale up to the present.

98. Service members, such as Plaintiff, who used the Combat Arms Earplugs would have remained unaware of the risk due to its subtle and imperceptible nature.

99. Post-sale warnings were feasible and could have been effectively communicated to users such as Plaintiff.

100. Had such post-sale warnings or instructions been provided, Plaintiff would have not used the Combat Arms Earplugs and would have used an alternative device or would have followed any instructions that would have prevented the Combat Arms Earplugs from permitting harmful sounds from entering the ear canal.

101. The risk of harm in failing to provide a post-sale warning or instructions greatly exceeded the cost of providing them.

102. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's failure to provide a proper post- sale warning or proper post-sale instructions.

103. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

104. As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

105. As a further result of said injuries his hearing loss will likely continue

to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many lite activities.

Count 4: Negligence Per Se

106. Plaintiff incorporates paragraphs 1-57 above as if fully set forth herein.

107. Federal law requires manufacturers of all hearing protective devices to comply with testing and labeling requirements promulgated by the EPA. See 42 U.S.C. § 4901, et seq; 40 C.F.R. § 211.201, et seq.

108. 3M was required fo test and label the Combat Arms Earplugs in accordance with this federal law.

109. 3M violated these statutes and regulations-and therefore breached the standard of care--by failing to test and label the Combat Arms Earplugs in accordance with these requirements. In particular, 3M's sham NRR testing, false statements regarding the efficacy of the Combat Arms Earplugs, and failure to disclose that the wearer must fold back the flanges on the opposing end of the earplug violated this federal law.

110. Plaintiff is within the intended protection of these federal laws and his injury is of the type the legislation was intended to prevent.

111. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's failure to comply with these provisions.

112. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

113. As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

114. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many life activities.

Count 5: Breach of Express Warranty

115. Plaintiff incorporates the paragraphs above as if fully set forth herein.

116. 3M expressly warranted, through its certifications to the military that:

i. The Combat Arms Earplugs were 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;

ii. The green end of the Combat Arms Earplugs reduced sound 25-40 decibels (depending on the frequency of the sound);

iii. The efficacy of the Combat Arms Earplugs were tested in accordance with **ANSI** S3.19; and

iv. The Combat Arms Earplugs are free from all defects that detract from their appearance or impair their serviceability.

b. In addition, the packaging and instructions for the Combat Arms Earplugs:

i. State that they allow wearers to hear low-level sounds critical to mission safety and, "when needed, the plugs' 'filter' reacts to provide instant protection from high-level noises. It's that easy. It's that quick."

ii. Provide sound attenuation data for each side of the earplugs.

117. Each of these representations was part of the basis of the bargain for the procurement of the Combat Arms Earplugs.

118. But the actual Combat Arms Earplugs Plaintiff used did not conform to any of these warranties.

119. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's breach of these express warranties.

120. As a result of said injuries, the Plaintiff has been and will be required to wear hearin!J aides and he will incur substantial expenses for medical care and treatment for-the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

121. As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

122. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many life activities.

Count 6: Breach of Implied Warranty

123. Plaintiff incorporates paragraphs 1-57 above as if fully set forth herein.

124. 3M is a merchant of the Combat Arms Earplugs and similar hearing protection devices.

125. 3M knew or had reason to know the particular purpose the Combat Arms Earplugs were being used for.

126. 3M knew or had reason to know the buyer would rely on 3M's skill and judgment in selecting or providing goods suitable for that purpose.

127. Plaintiff relied on 3M's skill or judgment in selecting or providing the Combat Arms Earplugs suitable for that purpose.

128. The law implies that the seller warrants or guarantees that the purchased goods:

i. Would pass without objection in the trade under the contract description;

ii. Are fit for the ordinary purposes for which the goods are used;

iii. Are adequately contained, packaged, and labeled as required in the agreement; and

iv. Conform to the promises or stated facts on the container or label.

129. 3M breached these implied warranties by delivering a defective product

that did not work as it was designed to do-it did not protect Plaintiffs hearing, it did not conform the USAF's specification and requirements for the product, it did not provide proper instructions on how to ensure that the earplugs would perform well, and it did not conform to the representations stated on the product's label.

130. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's breach of these implied warranties.

131. As a result of said injuries, the Plaintiff will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

132. As a further result of said injuries arid damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

133. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many life activities.

Count 7: Fraudulent Misrepresentation

134. Plaintiff incorporates the paragraphs above as if fully set forth herein.

135. 3M falsely represented that the Combat Arms Earplugs would protect

military service members hearing from loud and destructive noises and had the specific Noise Reduction Ratings disclosed on the package and/or labeling.

136. 3M knew this information was false because its own testing had revealed that the Combat Arms Earplugs were defective, and would not achieve the specific NRR advertised, when used in the instructed manner.

137. 3M provided no warning or instructions that Plaintiff had to fold back the flanges on the opposite end of the plugs to achieve a proper fit to seal out the ambient noise.

138. Plaintiff reasonably relied on 3M's false misrepresentations and omissions.

139. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's fraudulent misrepresentations.

140. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

141. . As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

142. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many life activities.

Count 8: Fraudulent Concealment

143. Plaintiff incorporates the paragraphs above as if fully set forth herein.

144. 3M fraudulently concealed the following material information:

a. That the Combat Arms Earplugs were defective;

b. That the Combat Arms Earplugs, due to a design defect, had a tendency to dislodge from the ear, rendering them ineffective at protecting the service member's hearing;

c. That the flanges on the opposite end of the earplug had to be folded back to prevent the earplug from dislodging during use; and

d. That 3M's NRR testing of the Combat Arms Earplugs was a sham.

145. 3M had a duty to provide this information because 3M knew that the information it had provided about the earplugs, such as that they were effective at blocking noise, and had specific NRR ratings, were rendered false and/or misleading without providing the additional information 3M concealed, and because only 3M had access to this information.

146. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's fraudulent concealment.

147. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

148. As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

149. As a further result of said injuries his hearing loss will likely continue to deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of

many life activities.

Count 9: Negligent Misrepresentation

150. . Plaintiff incorporates the paragraphs above as if fully set forth herein.

151. 3M, in the course of its business, supplied false information that the Combat Arms Earplugs were free of defects, would protect Plaintiff from loud noises, and had specific NRR ratings.

152. 3M supplied this false information to induce the purchase and use of the Combat Arms Earplugs as part of Plaintiffs military service.

153. 3M failed to use reasonable care or competence in communicating these false statements to Plaintiff.

154. The USAF and Plaintiff justifiably relied on the information because they had no reason to suspect that 3M was providing inaccurate information and had no way of discovering the truth for themselves.

155. Plaintiff was injured and suffered severe and permanent sensorineural hearing loss, as a direct and proximate result of 3M's negligent misrepresentation.

156. As a result of said injuries, the Plaintiff has been and will be required to wear hearing aides and he will incur substantial expenses for medical care and treatment for the rest of his life. In addition, the Plaintiff suffered and will in the future continue to suffer great physical and mental pain and has been and will in the future be unable to participate in many of the activities in which he engaged prior to suffering permanent hearing loss.

157. As a further result of said injuries and damages, his military career and employment opportunities will be adversely affected throughout his life which will cause him economic losses.

158. As a further result of said injuries his hearing loss will likely continue to

deteriorate over the course of his entire life, and he will suffer a loss of enjoyment of many life activities.

Count 9: Punitive Damages

159. Plaintiff incorporates the paragraphs above as if fully set forth herein.

160. Because 3M's actions were deliberate and willful, and because 3M acted with deliberate indifference to the rights and safety of Plaintiff and thousands of other USAF service members, punitive damages should be awarded.

PRAYER FOR RELIEF

Plaintiffs demand judgment against all Defendants for:

a. All compensatory, consequential, incidental and all other money damages in an amount to be proven at trial;

b. Punitive damages in an amount to be proven at trial;

c. Attorneys' fees;

d. Pre- and post-judgment interest at the maximum rate allowed by law;

e. The costs of this action; and

f. Such other and further relief as is appropriate.

PLAINTIFFS DUSTIN FITZPATRICK AND REYNALDO PADILLA

BY: /s/Michelle N. Holmes

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

DUSTIN FITZPATRICK AND REYNALDO PADILLA Plaintiffs,	)	
V.	)	
3M COMPANY, AEARO HOLDING) LLC, AEARO TECHNOLOGIES, LLC,) AEARO INTERMEDIATE, LLC, AEARO, LLC Defendants.	)	JUNE 12, 2019

DEMAND FOR JURY TRIAL

The plaintiffs hereby demand a trial by jury as to all issues in this action.

PLAINTIFFS DUSTIN FITZPATRICK AND REYNALDO PADILLA

BY: /s/Michelle N. Holmes

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