

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

IN RE: 3M COMBAT ARMS
EARPLUG PRODUCTS LIABILITY
LITIGATION

This Document Relates To

ANTHONY CIAFFONE,

Plaintiff,

v.

3M COMPANY,
AEARO HOLDINGS, LLC,
AEARO INTERMEDIATE, LLC
AEARO, LLC and
AEARO TECHNOLOGIES, LLC,

Defendants.

Case No. 3:19md2885

Jury Trial Demanded

Direct File No.:

Judge M. Casey Rodgers

Magistrate Judge Gary R. Jones

COMPLAINT

Plaintiff, Anthony Ciaffone, a Veteran of the United States Army, (hereinafter referred to as “Plaintiff”) by and through his undersigned counsel, hereby commences this action against Defendants, 3M Company, Aearo Holdings, LLC, Aearo Intermediate, LLC, Aearo, LLC, and Aearo Technologies, LLC (hereinafter collectively referred to as “Defendant”, “Defendants”, “3M”, or “3M/Aearo”) for 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”). 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.

I. INTRODUCTION

1. This case arises from defective earplugs manufactured by Defendants and sold to the United States military for use by American servicemen and servicewomen.

2. Defendant knew that its earplugs were defective, but manipulated laboratory testing results and falsely represented to the military as meeting the military's specifications, including representations by 3M/Aearo that their Dual-ended Combat Arms™ earplugs offered maximum hearing protection for military personnel and that they were free from all defects that could impair their serviceability. Despite these representations to the United States military, Defendant knew that its Dual-ended Combat Arms™ earplugs were defective and created a significant risk of hearing loss, tinnitus, and other hearing related injuries to all service members who used these earplugs during training or combat exercises.

3. Defendant sold the defective Dual-ended Combat Arms™ earplugs to branches of the United States military for more than a decade without providing the U.S. military and/or Plaintiff with any warning of the known defects, causing Plaintiff and other service members similar permanent injuries, such as tinnitus and hearing loss.

4. Defendant's Dual-ended Combat Arms™ earplugs were standard issue in certain branches of the U.S. military (including Plaintiff's) between at least 2003 to at least 2015.

5. Defendant's willful and fraudulent actions have likely caused hundreds of thousands, if not millions, of U.S. service members to suffer from significant and permanent injuries, pain, suffering, and the loss of the pleasures of life.

II. PARTIES

6. Plaintiff is over 18 years of age and is a citizen and resident of Howard Beach, New York.

7. Plaintiff, a Veteran of the United States Army, brings this suit to recover damages arising from personal injuries sustained while in training and/or on active military duty domestically and abroad.

8. Plaintiff was issued and used Defendant's Dual-ended Combat Arms™ earplugs during training and combat exercises. Plaintiff is now suffering from tinnitus and hearing loss from his usage of the Dual-ended Combat Arms™ earplugs.

9. Defendant, 3M Company, 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 United States.

10. Defendant Aearo Technologies LLC ("ATL") is a limited liability company formed in Delaware with its principal place of business in St. Paul, Minnesota.

11. 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.

12. 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.

13. 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 "Defendant", "Defendants", "3M", and/or "3M/Aearo" throughout this Complaint.

III. JURISDICTION AND VENUE

14. Plaintiff's filing of this Complaint in this district does not alter the choice-of-law analysis and does not constitute a waiver of any of Plaintiff's rights to transfer to another district at the conclusion of pretrial proceedings in this case. Plaintiff has filed this Complaint in this district in order to advance the efficient and orderly resolution of claims arising from Defendant's conduct.

15. This action is being filed directly into this Court in accordance to Pretrial Order No. 5 of Case No. 3:19-md-2885, *In Re: 3M Combat Arms Earplug Products Liability Litigation* as an associated case. The designated forum for this action for the purposes of remand is in the United States District Court for the District of Kansas.

16. This Court has diversity jurisdiction over this action under 28 U.S.C. §1332(a) because the amount in controversy exceeds \$75,000.00 and Plaintiff is a citizen of a different state than Defendant.

IV. FACTUAL ALLEGATIONS

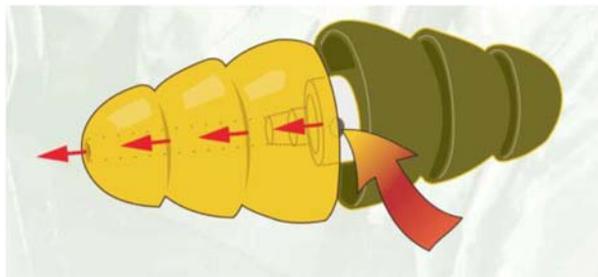
17. The United States military supplies service members with, among other things, earplugs, to protect their hearing from damage. The government obtains those earplugs from private companies and its standards for military-use earplugs are understandably, demanding. Service members must be able to perform their duties, in training and in combat, and must also be

able to hear spoken commands and other important sounds while also being protected from the damaging impulse sounds of explosions, gunfire, aircraft, and other equipment.

18. Based on information and belief, and 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), 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 known by Defendant that hampered the effectiveness of the hearing protection devices.¹

19. 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.

20. Defendant's Dual-ended Combat Arms™ earplugs were designed for the specific purpose of providing servicemen and servicewomen a single set of earplugs that provide two options for hearing attenuation depending on how they are worn.



¹ 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 July 22, 2019).

21. If worn in the “closed” or “blocked” position (olive end in), Dual-ended Combat Arms™ earplugs are intended to act as a traditional earplug and block as much sound as possible.

22. If worn in the “open” or “unblocked” position (yellow side in user’s ear), Defendant’s Dual-ended Combat Arms™ earplugs are intended to 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.

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

24. 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.

25. When inserted according to 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 the wearers’ ear canals and providing insufficient protection.

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

27. These earplugs were originally created by ATL, who was the global market leader in hearing and eye protection.

28. Defendant 3M acquired ATL in 2008 for \$1.2 billion, including Aearo’s liabilities, (and thus 3M is liable for Aearo’s conduct as alleged herein).

29. Following 3M’s acquisition of ATL, 3M hired ATL’s employees and maintains it as a separate operating unit. Post-acquisition, the Combat Arms earplugs have been marketed and sold under the 3M brand. Because 3M acquired both the assets and liabilities of ATL, the entities

are used interchangeably and all allegations against ATL are directed as a matter of law against 3M.

30. Earplugs like the Dual-ended Combat Arms™ earplugs are sold with a stated Noise Reduction Rating (“NRR”)² that should accurately reflect the effectiveness of hearing protection. The stated NRR of the Dual-ended Combat Arms™ earplugs was 22 NRR with the green end inserted and 0 NRR with the yellow end inserted.

31. The military likely purchased, at a minimum, one pair of 3M’s Dual-ended Combat Arms™ earplugs for each deployed soldier annually involved in certain foreign engagements between at least 2003 and at least 2015.³

32. 3M/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.

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

History of Testing – January 2000

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

35. 3M/Aearo chose to conduct the testing at its own laboratory rather than an outside, independent laboratory.

² 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 and Health Administration (OSHA). The higher the NRR number associated with a hearing protector, the greater the potential for noise reduction.

³ 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).

36. 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.

37. 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.

38. 3M/Aearo 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.

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

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

41. As a result, 3M/Aearo prematurely terminated the January 2000 testing of the closed end of the Dual-ended Combat Arms™ earplugs.

42. 3M/Aearo personnel determined that when the closed, olive end of the earplug was inserted into the wearer's ear according to the 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 of 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.

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

44. 3M/Aearo 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.

45. 3M/Aearo personnel decided not to test the closed end of the Dual-ended Combat Arms™ earplugs for two of the ten subjects because the results were weak below the intended and desired NRR.

46. 3M/Aearo completed testing of all ten subjects with the open end of the Dual-ended Combat Arms™ earplugs to obtain a facially invalid -2 NRR, which would indicate that the closed end of the earplug actually amplified sound.

47. 3M/Aearo represented the -2 NRR as a “0” NRR which 3M/Aearo has displayed on its packaging since its launch.

48. 3M/Aearo falsely touts the “0” NRR as a benefit of the Dual-ended Combat Arms™ earplugs, by suggesting that soldiers will be able to hear their fellow soldiers and enemy combatants while still providing some protection. As stated however, the true -2 NRR of the “open” end actually amplifies sound thereby exposing the wearer to harm.

History of Testing – February 2000

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

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

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

52. 3M, however, never properly warned service members that the only potential way to achieve this purported NRR was to modify the Dual-ended Combat Arms™ earplugs by folding the yellow flanges on the opposite end.

53. The yellow, open end of the Dual-ended Combat Arms™ earplugs was not retested using the “modified” fitting procedure.

Defendant’s Representations and Omissions

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

55. From 2003-2012, 3M/Aearo was the exclusive supplier of these type of earplugs to the U.S. military.

56. 3M/Aearo was aware of the design defects alleged herein as early as 2000.

57. Accordingly, the defects of the Dual-ended Combat Arms™ earplugs were known to Defendant well before it became the exclusive provider of the earplugs to the U.S. military.

58. 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.

59. 3M/Aearo responded to the military’s RFP with express certifications that it complied with the Salient Characteristics of Medical Procurement Item Description (“MPID”) of Solicitation No. SP0200-06-R-4202.

60. 3M/Aearo knew at the time it made its certifications that the earplugs did not comply with the MPID.

61. 3M/Aearo knew that 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.

62. 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.**⁴

63. 3M/Aearo knew that its test protocol did not comply with ANSI S3.19 but nevertheless certified that its testing was fully compliant with the U.S. military's specifications.

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

65. As part of that process, Aearo and 3M had to continually certify that the earplugs complied with certain contract requirements, specifically the Salient Characteristics of MPID Solicitation No. SP0200-06-R-4202.

⁴ Solicitation No. SP0200-06-R-4202 at 41-42 (Emphasis added).

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

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

68. Aearo and 3M did not satisfy the requirements of the Salient Characteristics of Medical Procurement Item Description of Solicitation No. SP0200-06-R-4202 because the earplugs were defectively designed and the instructions the companies supplied did not explain the defect or the need to, and how to, fold back the opposing flange.

69. Further, the value and effectiveness of earplugs has been standardized under federal law through a Noise Reduction Rating (“NRR”). The testing and labeling of earplugs— such as the Combat Arms earplugs—to achieve an NRR is governed by federal regulations promulgated by the Environmental Protection Agency (“EPA”) pursuant to the Noise Control Act, 42 U.S.C. §4901 et seq. Specifically, 40 C.F.R. §211.206-1 provides:

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.

70. The NRR is supposed to represent the amount of sound attenuation experienced by a test group under conditions specified by the federal Noise Control Act’s testing methodology.

71. 3M/Aearo's own employees monitored the test results as the tests were performed, which allowed them to stop the testing at any point if they were not achieving the desired NRR. This violated the ANSI S3.19-1974 testing protocol.

72. In addition, the U.S. military may only purchase earplugs that meet the testing standards established by the U.S. Army Public Health Command, Army Hearing Program, or equivalent standards that may be established by other branches of the military. Any such standards are tied to the NRR achieved under the EPA regulations.

73. Furthermore, 40 C.F.R. § 211.204-4(e), of the 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.** (Emphasis added).

74. 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.

75. 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.

76. 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.

77. Instead, Defendant improperly instructed wearers to simply insert the earplugs into the ear canal.

78. By failing to instruct wearers of the Dual-ended Combat Arms™ earplugs 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.

79. 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 and tinnitus in addition to exposing millions more to the risk caused by 3M/Aearo’s defective earplugs.

80. 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).

81. 3M/Aearo’s instructions instead have provided standard fitting instructions for inserting the earplug on both ends which are facially inadequate.

82. 3M/Aearo was aware prior to selling the earplugs to the military, that testing procedures and fitting instructions were unlawfully manipulated to obtain the NRRs it wanted on both ends of the Dual-ended Combat Arms™ earplugs, and Defendant continues to use these inaccurate NRRs to market the earplugs to the military for more than ten years without disclosing the design defect.

Plaintiff’s Specific Allegations

83. Plaintiff enlisted in the United States Army in 2007 at the age of 22 and was discharged in 2013.

84. Prior to joining the United States Army, Plaintiff had no signs of symptoms of hearing loss or tinnitus.

85. The Dual-ended Combat Arms™ earplugs were standard issue and were provided to Plaintiff during his service at Fort Riley, Kansas in 2007.

86. Plaintiff was issued and used the Dual-ended Combat Arms™ earplugs when firing weapons and around other large noises during his service, including during training exercises at military installations in the United States, including Fort Riley, and while serving overseas in combat deployments, as Plaintiff did in Iraq from 2010 through 2011.

87. Plaintiff, at all times material, wore the Dual-ended Combat Arms™ earplugs consistent with 3M's instructions and was never instructed to fold back the flanges of the earplug on the opposite side of that which was inserted into his ear canal.

88. Since using the Combat Arms Earplugs, Plaintiff incurred and suffers from tinnitus and/or hearing loss, which was first diagnosed in or around 2013, and is significant, permanent and ongoing.

V. CAUSES OF ACTION

First Cause of Action **Negligence – Design Defect**

89. Plaintiff re-alleges and incorporates by reference all preceding paragraphs in this Complaint as though fully set forth herein.

90. 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™ earplugs with reasonable and due care for the safety and well-being of all those using the earplugs, including but not limited to Plaintiff and

all other U.S. military service members who used Defendant's Dual-ended Combat Arms™ earplugs in connection with military service.

91. Plaintiff was a foreseeable user of the Dual-ended Combat Arms™ earplugs in that Defendant knew that the Dual-ended Combat Arms™ earplugs would be used by U.S. military service members, including Plaintiff.

92. The Dual-ended Combat Arms™ earplugs are defective in that the design of the earplug causes them to loosen in the wearer's ear, imperceptibly to the wearer, thereby permitting dangerous 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.

93. When the Dual-ended Combat Arms™ earplugs are inserted into the ear according to standard fitting instructions, a proper seal is not formed with the ear canal.

94. 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.

95. Upon information and belief, Defendant failed to exercise reasonable and due care under the circumstances and therefore breached its duties in the following ways:

- a. Failing to design the Dual-ended Combat Arms™ earplugs in a manner which would result in an NRR of 22 when used with the closed, olive end inserted, according to the standard fitting instructions provided by Defendant;
- b. Failing to properly and thoroughly test the Dual-ended Combat Arms™ earplugs;
- c. Failing to properly and thoroughly analyze the data resulting from testing of the Dual-ended Combat Arms™ earplugs;

- d. Designing, manufacturing, distributing and selling the Dual-ended Combat Arms™ earplugs without an adequate warning of the significant and dangerous risks of the earplugs;
- e. Designing, manufacturing, distributing and selling the Dual-ended Combat Arms™ earplugs without providing proper instructions to avoid the harm which could foreseeably occur because of using the earplugs in the manner the Defendant's standard fitting instructions directed;
- f. Failing to fulfil the standard of care required of a reasonable and prudent manufacturer of hearing protection devices, specifically including products such as the Dual-ended Combat Arms™ earplugs which were intended for military use; and
- g. Negligently continuing to manufacture and distribute the Dual-ended Combat Arms™ earplugs to the U.S. military after Defendant knew or should have known of its adverse effects and/or the availability of safer designs.

96. Defendant knew or should have known that the defective condition of the Dual-ended Combat Arms™ earplugs made it unreasonably dangerous to the U.S. military service members who used the earplugs.

97. The Dual-ended Combat Arms™ earplugs were dangerous when used by U.S. military service members who used it with the knowledge common to the U.S. military as to the product's characteristics and common usage.

98. Defendant knew or should have known of the defective designed at the time that the Dual-ended Combat Arms™ earplugs were used by Plaintiff.

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

100. At all relevant times, Plaintiff used the Dual-ended Combat Arms™ earplugs in the manner in which they were intended, as provided for by Defendant's instructions.

101. As designers, developers, manufacturers, inspectors, advertisers, distributors, and suppliers, of the Dual-ended Combat Arms™ earplugs and owed a duty of care to Plaintiff and all those similarly situated, including the countless U.S. military service members relying on Defendant's products to protect them.

102. At all times, it was foreseeable to Defendant that its actions, omissions, and misrepresentations would lead to severe, permanent, and debilitating injuries to Plaintiff and all those similarly situated.

103. The Dual-ended Combat Arms™ earplugs were the proximate cause of Plaintiff's personal injuries. Defendant's conduct was a substantial factor in bringing about the injuries sustained by Plaintiff because Defendant designed, manufactured, tested, sold, and distributed the Dual-ended Combat Arms™ earplugs to the U.S. military.

104. As a direct and proximate result of Defendant's negligence in designing the defective Dual-ended Combat Arms™ earplugs, Plaintiff was caused to sustain severe and permanent physical injury, including sensorineural hearing loss and tinnitus, monetary damages, pain, suffering, mental and emotional anguish, loss of capacity to enjoy life, and other compensable damages for which relief is sought.

105. Plaintiff seeks judgment against Defendant and requests compensatory damages and punitive damages, together with interest, cost of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

Second Cause of Action
Strict Liability – Design Defect

106. Plaintiff re-alleges and incorporates by reference all previous paragraphs in this Complaint as though fully set forth herein.

107. Plaintiff was a foreseeable user of the Dual-ended Combat Arms™ earplugs.

108. The Dual-ended Combat Arms™ earplugs are defective in that the design of the earplug causes them to loosen in the wearer's ear, imperceptibly to the wearer, thereby permitting dangerous sounds to enter the ear canal by travelling around the outside of the earplug while the user incorrectly believes that the earplug is working as intended.

109. Defendant knew that the defective condition of the Dual-ended Combat Arms™ earplugs made it unreasonably dangerous to all those using them, including but not limited to military service members such as Plaintiff.

110. The Dual-ended Combat Arms™ 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™ earplugs allow for dangerous sounds to bypass the plug altogether, thereby posing a serious risk to the wearer's hearing unbeknownst to him or her.

111. Defendant knew of the defective design at the time the Dual-ended Combat Arms™ earplugs were provided to Plaintiff.

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

113. At all relevant times, Plaintiff used the Dual-ended Combat Arms™ earplugs in the manner in which they were intended and as provided for by Defendant's instructions.

114. The Dual-ended Combat Arms™ earplugs were the proximate cause of Plaintiff's injuries and damages because the short-stem 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.

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

116. As a direct and proximate result of the Defendant's design defect, Plaintiff was caused to sustain severe and permanent physical injury, including sensorineural hearing loss and tinnitus, monetary damages, pain, suffering, mental and emotional anguish, loss of capacity to enjoy life, and other compensable damages for which relief is sought.

117. Plaintiff seeks judgment against Defendant and requests compensatory damages and punitive damages, together with interest, cost of suit, attorney's fees, and such further relief as the Court deems equitable and just.

Third Cause of Action
Negligence – Failure to Warn

118. Plaintiff re-alleges and incorporates by reference all previous paragraphs in this Complaint as though fully set forth herein.

119. 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™ earplugs with reasonable and due care for the safety and well-being of U.S. military service members, including Plaintiff, who were provided with and used the earplugs during their service with the U.S. military.

120. Plaintiff was a foreseeable user of the Dual-ended Combat Arms™ earplugs.

121. The Dual-ended Combat Arms™ 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 dangerous 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.

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

123. The warnings and instructions that accompanies the Dual-ended Combat Arms™ earplugs failed to provide that level of information than an ordinary consumer would expect when using the Dual-ended Combat Arms™ earplugs in a manner reasonably foreseeable to Defendant.

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

125. The Dual-ended Combat Arms™ 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 thus positing a serious risk to Plaintiff's hearing unbeknownst to him.

126. As a direct and proximate result of Defendant's failure to warn, Plaintiff was caused to sustain severe and permanent physical injury, including sensorineural hearing loss and tinnitus, monetary damages, pain, suffering, mental and emotional anguish, loss of capacity to enjoy life, and other compensable damages for which relief is sought.

127. Plaintiff seeks judgment against Defendant and requests compensatory damages and punitive damages, together with interest, cost of suit, attorney's fees, and such further relief as the Court deems equitable and just.

Fourth Cause of Action
Strict Liability – Failure to Warn

128. Plaintiff re-alleges and incorporates by reference all previous paragraphs in this Complaint as though fully set forth herein.

129. Defendant is engaged in the business of designing, manufacturing, and selling the Dual-ended Combat Arms™ earplugs.

130. Plaintiff was a foreseeable user of the Dual-ended Combat Arms™ earplugs.

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

132. The Dual-ended Combat Arms™ earplugs are defective and unreasonably dangerous even if Defendants exercised all proper care in the preparation and sale of the product.

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

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

135. The Dual-ended Combat Arms™ earplugs were dangerous to an extent beyond which would be contemplated by the ordinary user who purchased and/or used the device because the design of the Dual-ended Combat Arms™ 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.

136. Defendant knew of the defective design at the time the Dual-ended Combat Arms™ earplugs were provided to Plaintiff.

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

138. At the time the Dual-ended Combat Arms™ earplugs were used by Plaintiff, the Dual-ended Combat Arms™ earplugs were defective and were in a condition which made them unreasonably dangerous to the ordinary U.S. military service member who used them.

139. At all relevant times, Plaintiff used the Dual-ended Combat Arms™ earplugs in the manner in which they were intended.

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

141. The Dual-ended Combat Arms™ earplugs contained no warnings or instructions, or in the alternative, inadequate warnings or instructions, that subjects in testing did not follow Defendant's standard instructions for insertion, but rather the "modified" insertion method requiring the wearer to fold back the flanges of the opposite end before inserting the plug into the ear.

142. The Dual-ended Combat Arms™ earplugs contained no warnings or instructions, or in the alternative, inadequate warnings or instructions, that following Defendants standard instructions for insertion would not achieve the "22" NRR and would thereby pose a serious risk to Plaintiff's hearing unbeknownst to him.

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

144. Had Plaintiff received proper or adequate warnings or instructions as to the risks associated with the Dual-ended Combat Arms™ earplugs, including but not limited to instructing wearers to fold back the flanges on the open/unblocked end of the plug before inserting the closed/blocked end of the plug into the ear, Plaintiff would have heeded the warning and/or instructions.

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

146. 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™ earplugs that caused Plaintiff's hearing loss and tinnitus.

147. As a direct and proximate result of Defendant's design defect, Plaintiff was caused to sustain severe and permanent physical injury, including sensorineural hearing loss and tinnitus, monetary damages, pain, suffering, mental and emotional anguish, loss of capacity to enjoy life, and other compensable damages for which relief is sought.

148. Plaintiff seeks judgment against Defendant and requests compensatory damages and punitive damages, together with interest, cost of suit, attorney's fees, and such further relief as the Court deems equitable and just.

Fifth Cause of Action
Breach of Express Warranty

149. Plaintiff re-alleges and incorporates by reference all previous paragraphs in this Complaint as though fully set forth herein.

150. Through Defendant's public statements, descriptions of the Dual-ended Combat Arms™ earplugs, and promises relating to the Dual-ended Combat Arms™ earplugs, Defendant expressly warranted, among other things, that the Dual-ended Combat Arms™ earplugs were safe and effective for their intended use, and were designed and constructed to prevent harmful sounds from bypassing the earplugs in order to protect the user's hearing.

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

152. When Defendant made these express warranties, it knew the purpose(s) for which the Dual-ended Combat Arms™ earplugs were to be used and warranted them to be in all respects safe and proper for all such purposes.

153. Defendant drafted the documents and/or made the statements upon which these warranty claims are based and, in doing so, defined the terms of those warranties.

154. The Dual-ended Combat Arms™ earplugs do not conform to Defendant's promises, descriptions, or affirmation of fact, and was not adequately packaged, labeled, promoted, and/or fit for the ordinary purposes for which such earplugs are used.

155. Plaintiff further alleges that all of the aforementioned written materials are known to Defendant and in its possession, and it is Plaintiff's reasonable belief that these materials shall be produced by Defendant and be made part of the record once Plaintiff is afforded the opportunity to conduct discovery.

156. As a direct and proximate result of Defendant's breach of the express warranties, Plaintiff was caused to sustain severe and permanent physical injury, including sensorineural hearing loss and tinnitus, monetary damages, pain, suffering, mental and emotional anguish, loss of capacity to enjoy life, and other compensable damages for which relief is sought.

157. Plaintiff seeks judgment against Defendant and requests compensatory damages and punitive damages, together with interest, cost of suit, attorney's fees, and such further relief as the Court deems equitable and just.

Sixth Cause of Action
Breach of Implied Warranty

158. Plaintiff re-alleges and incorporates by reference all previous paragraphs in this Complaint as though fully set forth herein.

159. At the time that Defendant marketed, sold, and distributed the Dual-ended Combat Arms™ earplugs, Defendant knew of the use for which the earplugs were intended and impliedly warranted that the Dual-ended Combat Arms™ earplugs were of merchantable quality and effective for such use.

160. Defendant knew, or had reason to know, that Plaintiff would rely on Defendant's judgment and skill in providing the Dual-ended Combat Arms™ earplugs for their intended use.

161. Plaintiff reasonably relied on the skill and judgment of Defendant as to whether the Dual-ended Combat Arms™ earplugs were of merchantable quality, safe, and effective for their intended use.

162. Contrary to such implied warranties, the Dual-ended Combat Arms™ earplugs were not of merchantable quality, nor were they safe and effective for their intended use, because the Dual-ended Combat Arms™ earplugs were, and are, unreasonably dangerous, defective, unfit and ineffective for the ordinary purposes for which the Dual-ended Combat Arms™ earplugs were used.

163. As a direct and proximate result of Defendant's breach of implied warranties, Plaintiff was caused to sustain severe and permanent physical injury, including sensorineural hearing loss and tinnitus, monetary damages, pain, suffering, mental and emotional anguish, loss of capacity to enjoy life, and other compensable damages for which relief is sought.

164. Plaintiff seeks judgment against Defendant and requests compensatory damages and punitive damages, together with interest, cost of suit, attorney's fees, and such further relief as the Court deems equitable and just.

Seventh Cause of Action
Fraudulent Misrepresentation

165. Plaintiff re-alleges and incorporates by reference all previous paragraphs in this Complaint as though fully set forth herein.

166. Defendant falsely and fraudulently represented to Plaintiff, the United States military and/or the public in general, that the Dual-ended Combat Arms™ earplugs had been properly tested and were free from all defects.

167. Defendant intentionally manipulated testing of the Dual-ended Combat Arms™ earplugs, resulting in false and misleading NRRs and improper fitting instructions.

168. These representations made by Defendant were, in fact, false.

169. When said representations were made by Defendant, it knew those representations to be false and it willfully, wantonly and recklessly disregarded whether the representations were true.

170. These representations were made by Defendant with the intent of defrauding and deceiving Plaintiff, the United States military and the public in general, and were made with the intent of inducing Plaintiff, the United States military and the public in general, to recommend, purchase, and/or use the Dual-ended Combat Arms™ earplugs, all of which evidenced a callous, reckless, willful, and depraved indifference to the health, safety and welfare of Plaintiff and all others similarly situated.

171. At the time the above detailed representations were made by Defendant, and at the time that Plaintiff used the Dual-ended Combat Arms™ earplugs, Plaintiff and/or the United States military was unaware of the falsity of said representations and reasonably believed them to be true.

172. In reliance upon said representation, Plaintiff was induced to and did use Dual-ended Combat Arms™ earplugs, thereby sustaining severe and permanent personal injuries.

173. At all times, Defendant knew and was aware or should have been aware that the Dual-ended Combat Arms™ earplugs had not been sufficiently tested, were defective in nature, and/or that they lacked adequate and/or sufficient instructions.

174. Defendant knew or should have known that the Dual-ended Combat Arms™ earplugs had a potential to, could, and would cause severe and permanent injuries to the users of the earplugs.

175. Defendant brought the Dual-ended Combat Arms™ earplugs to market, and acted fraudulently, wantonly and maliciously to the detriment of Plaintiff and all other U.S. military service members similarly situated.

176. As a result of the foregoing acts and omissions Plaintiff was caused to sustain severe and permanent physical injury, including sensorineural hearing loss and tinnitus, monetary damages, pain, suffering, mental and emotional anguish, loss of capacity to enjoy life, and other compensable damages for which relief is sought.

177. Plaintiff seeks judgment against Defendant and requests compensatory damages and punitive damages, together with interest, cost of suit, attorney's fees, and such further relief as the Court deems equitable and just.

Eighth Cause of Action
Fraudulent Concealment

178. Plaintiff re-alleges and incorporates by reference all previous paragraphs in this Complaint as though fully set forth herein.

179. At all material times, Defendant misrepresented the safety and efficacy of the Dual-ended Combat Arms™ earplugs for their intended use.

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

181. In representations to Plaintiff, the United States military and the general public at large, Defendant fraudulently concealed and intentionally omitted the following material information:

- a. That the testing of the Dual-ended Combat Arms™ earplugs was intentionally flawed and biased;
- b. The amount of hearing protection provided by the Dual-ended Combat Arms™ earplugs;

- c. The proper instructions for utilizing the Dual-ended Combat Arms™ earplugs;
- d. That the Dual-ended Combat Arms™ earplugs were defective and unsafe in their design for their intended and advertised use;
- e. That the Dual-ended Combat Arms™ earplugs were manufactured in a defective nature and as a result were unsafe for their intended and advertised use; and
- f. That Defendant was aware of the defects in the Dual-ended Combat Arms™ earplugs.

182. At all times, Defendant had a duty to Plaintiff and all others similarly situated to disclose the known defective nature of the Dual-ended Combat Arms™ earplugs.

183. 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-ended Combat Arms™ earplugs, including but not limited to Plaintiff.

184. Defendant's concealment and omissions of material facts concerning, inter alia, the safety and efficacy of the Dual-ended Combat Arms™ earplugs were made purposefully, willfully, and/or wantonly, to mislead Plaintiff into reliance, and continued use of the Dual-ended Combat Arms™ earplugs, and actions thereon, and to cause Plaintiff to purchase and/or use the product.

185. At all times, Defendant knew that Plaintiff had no way to determine the truth behind Defendant's concealment and omissions, and that these included material omissions of fact surrounding the Dual-ended Combat Arms™ earplugs, as set forth herein.

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

187. By reason of the foregoing, Plaintiff was caused to sustain severe and permanent physical injury, including sensorineural hearing loss and tinnitus, monetary damages, pain,

suffering, mental and emotional anguish, loss of capacity to enjoy life, and other compensable damages for which relief is sought.

188. Plaintiff seeks judgment against Defendant and requests compensatory damages and punitive damages, together with interest, cost of suit, attorney's fees, and such further relief as the Court deems equitable and just.

Ninth Cause of Action
Negligent Misrepresentation

189. Plaintiff re-alleges and incorporates by reference all previous paragraphs in this Complaint as though fully set forth herein.

190. Defendant had a duty to represent to Plaintiff, the United States military and the public in general, that the Dual-ended Combat Arms™ earplugs had been properly tested and found to be effective.

191. Defendant was aware that its testing procedures and fitting instructions were unlawfully manipulated.

192. The representations made by Defendant were, in fact, false.

193. Defendant failed to exercise ordinary care in the representation of the Dual-ended Combat Arms™ earplugs, while involved in its manufacture, sale, testing, quality assurance, quality control, and/or distribution into interstate commerce, in that Defendant negligently misrepresented the Dual-ended Combat Arms™ earplugs' safety and efficacy.

194. Defendant breached its duty in representing the Dual-ended Combat Arms™ earplugs serious defects to Plaintiff.

195. As a result of the foregoing acts and omissions, Plaintiff was caused to sustain severe and permanent physical injury, including sensorineural hearing loss and tinnitus, monetary

damages, pain, suffering, mental and emotional anguish, loss of capacity to enjoy life, and other compensable damages for which relief is sought.

196. Plaintiff seeks judgment against Defendant and requests compensatory damages and punitive damages, together with interest, cost of suit, attorney's fees, and such further relief as the Court deems equitable and just.

Tenth Cause of Action
Fraud and Deceit

197. Plaintiff re-alleges and incorporates by reference all previous paragraphs in this Complaint as though fully set forth herein.

198. Defendant conducted unlawful and improper testing on the Dual-ended Combat Arms™ earplugs.

199. As a result of Defendant's unlawful and improper testing, Defendant blatantly and intentionally distributed false information which overstated the amount of hearing protection provided by the Dual-ended Combat Arms™ earplugs.

200. As a result of Defendant's unlawful and improper testing, Defendant intentionally omitted and misrepresented certain test results to Plaintiff and all others similarly situated.

201. Defendant had a duty when disseminating information to the United States military and the public to disseminate truthful information, including a parallel duty not to deceive them and/or Plaintiff.

202. The information distributed by Defendant to Plaintiff and all others similarly situated contained material misrepresentations of fact and/or omissions concerning the hearing protection provided by the Dual-ended Combat Arms™ earplugs.

203. These representations were false and misleading.

204. Upon information and belief, Defendant intentionally suppressed and/or manipulated test results to falsely overstate the amount of hearing protection provided by the Dual-ended Combat Arms™ earplugs.

205. Defendant purposely made these misrepresentations to deceive and defraud the United States military and the public in general, including Plaintiff, to gain their confidence and to induce the United States military and public in general, including Plaintiff, to purchase, request, dispense, recommend, and/or use the Dual-ended Combat Arms™ earplugs.

206. Defendant made the aforementioned false claims and false representations with the intent of convincing the United States military, public in general, and Plaintiff, that the Dual-ended Combat Arms™ earplugs were fit and safe for use.

207. The representations made by Defendant were false when made, and/or were made with a pretense of actual knowledge when such actual knowledge did not exist, and/or were made recklessly without regard to the actual facts.

208. The representations made by Defendant were made with the intention of deceiving and defrauding the United States military and Plaintiff and all other similarly situated and were made to induce the United States military and Plaintiff to rely upon misrepresentations and caused them, including Plaintiff, to purchase, use, rely on, request, dispense, and/or recommend the Dual-ended Combat Arms™ earplugs.

209. Defendant recklessly and intentionally falsely represented the dangerous and serious health and safety concerns of the Dual-ended Combat Arms™ earplugs to the United States military and public at large, and to Plaintiff in particular, for the purpose of influencing the marketing of a product known to be dangerous, defective, and/or not as safe as other reasonable alternatives.

210. Defendant willfully and intentionally failed to disclose the material facts regarding the dangerous and serious safety concerns of Dual-ended Combat Arms™ earplugs by concealing and suppressing material facts regarding the dangerous and serious health and/or safety concerns of Dual-ended Combat Arms™ earplugs.

211. Defendant willfully and intentionally failed to disclose the truth, failed to disclose material facts and made false representations with the purpose and design of deceiving the United States military, the Plaintiff, and other similarly situated, into a sense of security so that they would rely on such representations in purchasing and/or using the Dual-ended Combat Arms™ earplugs.

212. Plaintiff did in fact rely on and believe Defendant's representations to be true at the time they were made and relied upon the representations and was thereby induced to use and rely on the Dual-ended Combat Arms™ earplugs.

213. At the time the representations were made, Plaintiff did not know the truth regarding the dangerous and serious safety concerns of the Dual-ended Combat Arms™ earplugs.

214. Plaintiff did not discover the true facts with respect to the dangerous and serious health and/or safety concerns, and the false representations of Defendants, nor could Plaintiff have discovered the true facts.

215. Had Plaintiff known the true facts with respect to the dangerous and serious health and safety concerns of the Dual-ended Combat Arms™ earplugs, Plaintiff would not have used and/or relied upon them.

216. Defendant's aforementioned conduct constitutes fraud and deceit, and was committed and/or perpetrated willfully, wantonly, and/or purposefully on Plaintiff and all others similarly situated.

217. As a result of the foregoing acts and omissions, Plaintiff was caused to sustain severe and permanent physical injury, including sensorineural hearing loss and tinnitus, monetary damages, pain, suffering, mental and emotional anguish, loss of capacity to enjoy life, and other compensable damages for which relief is sought.

218. Plaintiff seeks judgment against Defendant and requests compensatory damages and punitive damages, together with interest, cost of suit, attorney's fees, and such further relief as the Court deems equitable and just.

Eleventh Cause of Action
Gross Negligence

219. Plaintiff re-alleges and incorporates by reference all previous paragraphs in this Complaint as though fully set forth herein.

220. The wrongs committed by Defendant were aggravated by the kind of malice, fraud, and grossly negligent disregard for the rights of others, the public, and Plaintiff, for which the law would allow the imposition of punitive damages (and which Plaintiff seeks, as set forth below).

221. Such punitive damages are appropriate given Defendant's conduct, as further alleged herein, which includes the failure to comply with applicable guidelines and standards, including but not limited to ANSI, OSHA, EPA, and MPID guidelines and standards, which recklessly caused substantial injuries to Plaintiff (or, when viewed objectively from Defendant's standpoint at the time of the conduct, involved an extreme degree of risk considering the probability and magnitude of the potential harm to others), of which Defendant was actually, subjectively aware of the risks involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others, or included a material representation that was false, with Defendant knowing that it was false or with reckless disregard as to its truth and as a positive assertion, with the intent that the representation is acted on by Plaintiff.

222. Plaintiff relied on the representations and suffered injuries as a proximate result of this reliance.

223. Plaintiff seeks to assert claims for punitive damages in an amount within the jurisdictional limits of the Court, as set forth below.

224. Plaintiff also alleges that the acts and omissions of the Defendant, whether taken singularly or in combination with others, constitute gross negligence that proximately caused the injuries to Plaintiff. In that regard, Plaintiff seeks punitive damages in amounts that would punish Defendant for its conduct, and which would deter other manufacturers from engaging in such misconduct in the future.

225. Plaintiff seeks judgment against Defendant and requests compensatory damages and punitive damages, together with interest, cost of suit, attorney's fees, and such further relief as the Court deems equitable and just.

Twelfth Cause of Action
Punitive Damages

226. Plaintiff re-alleges and incorporates by reference all previous paragraphs in this Complaint as though fully set forth herein.

227. Plaintiff seeks punitive damages which are warranted by the Defendant's malicious and wanton actions.

228. Defendant has acted willfully, wantonly, with an evil motive, and recklessly in one or more of the following ways:

- a. By failing to disclose material facts regarding the dangerous and serious safety concerns of the Dual-ended Combat Arms™ earplugs by concealing and suppressing material facts regarding the dangerous and serious health and/or safety concerns of the Dual-ended Combat Arms™ earplugs;
- b. By failing to disclose the truth and making false representations with the purpose and design of deceiving and lulling Plaintiff, and others similarly

situated, so that he would use and rely upon the Dual-ended Combat Arms™ earplugs;

- c. By falsely representing the dangerous and serious health and/or safety concerns of the Dual-ended Combat Arms™ earplugs to the public at large, and Plaintiff in particular.

229. Plaintiff demands judgment against Defendant and requests compensatory damages and punitive damages, together with interest, cost of suit, attorney's fees, and such further relief as the Court deems equitable and just.

VI. TIMELINESS AND TOLLING OF STATUTE OF LIMITATIONS

230. Plaintiff filed this lawsuit within the applicable limitations period of first suspecting that Defendant's 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 Plaintiff sustained his injuries, the cause was unknown to Plaintiff.

231. Plaintiff did not suspect, nor did he have reason to suspect, the cause of his injuries, or the tortious nature of Defendant's conduct causing his injuries, until less than the applicable limitations period prior to the filing of this action.

232. Plaintiff's claims are based on Defendant's affirmative involvement in manipulating test results and misrepresenting to the United States government and users of the Dual-ended Combat Arms™ earplugs, such as Plaintiff, of Defendant 3M's defective design, manufacture and marketing of the Dual-ended Combat Arms™ earplugs. The nature of the defects was such that they were imperceptible to wearers of the Dual-ended Combat Arms™ earplugs, such as Plaintiff, at the time of use.

233. Plaintiff neither knew nor had reason to know that Defendant was engaging in affirmative conduct whereby they manipulated test results and misrepresented to the United States government the quality and performance of the Dual-ended Combat Arms™ earplugs.

234. If the United States government neither knew nor had reason to know of Defendant's affirmative misconduct regarding its testing and the quality of the Dual-ended Combat Arms™ earplugs until first reported by a whistleblower, it goes without saying that Plaintiff would not know or have reason to know of this information.

235. The running of any statute of limitations has been tolled by reason of Defendant's fraudulent concealment. Through their affirmative misrepresentations and omissions, Defendants actively concealed from Plaintiff the risks associated with the defects in the Dual-ended Combat Arms™ earplugs.

236. 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. 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.

237. Therefore, the statute of limitations on Plaintiff's claims are tolled by fraudulent concealment and equitable tolling. Accordingly, Plaintiff's claims are timely.

238. Defendant is equitably estopped from relying on the defense of limitations until the time that Plaintiff's right of action was, or in the exercise of reasonable diligence should have been, discovered.

239. Due to imperceptible defects in the Dual-ended Combat Arms™ earplugs at issue, and in reliance on Defendant 3M's manipulation of test results and misrepresentations to the United States government as to the quality and performance of the Dual-ended Combat Arms™ earplugs, Plaintiff was unable to know of his injury at the time of its actual accrual.

240. Accordingly, the discovery rule provides an exception to the statute of limitations as to Plaintiff's claims.

241. 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.

VII. PRAYER FOR RELIEF

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

- a. That process issue according to law;
- b. That Defendant be duly served and cited to appear and answer herein, and that after due proceedings are had, 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;
- c. Pain and suffering (past and future);
- d. Wage loss (past and future);
- e. Loss of earnings and loss of earning capacity;
- f. Medical expenses (past and future);
- g. Loss of enjoyment of life (past and future);

- h. Mental anguish and distress (past and future);
- i. Disfigurement (past and future);
- j. Physical impairment (past and future);
- k. Attorney's fees;
- l. Punitive or exemplary damages in such amounts as may be proven at trial; and
- m. For all such other relief as to which Plaintiff may show himself justly entitled.

VIII. DEMAND FOR JURY TRIAL

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

Dated: July 25, 2019

SULLIVAN PAPAIN BLOCK McGRATH
& CANNAVO P.C.

By: /s/ Craig M. Silverman
Craig M. Silverman, MD Bar No. 18698 (Pro
Hac Vice Anticipated)
120 Broadway – 18th Floor
New York, New York 10271
Phone: (212) 732-9000
Fax: (212) 266-4141
Csilverman@triallaw1.com

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Anthony J. Ciaffone

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Craig M. Silverman, Sullivan Papain Block McGrath & Cannavo P.C.
120 Broadway, 18th Fl.
New York, NY 10271 212-266-4125

DEFENDANTS

3M Company, Aearo Holdings, LLC; Aearo Intermediate, LLC; Aearo, LLC; Aearo Technologies, LLC

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

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

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

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

- 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District (specify)
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

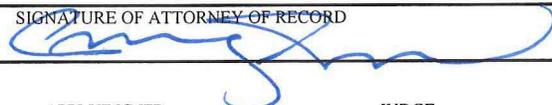
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332
Brief description of cause:
Product liability action arising out of 3M Dual-Ended Combat Arms earplugs

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 75,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE M. Casey Rodgers DOCKET NUMBER 3:19-MD-2885

DATE 07/25/2019 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

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:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Florida

Anthony Ciaffone

Plaintiff(s)

v.

3M Company, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) AEARO Holdings, LLC
c/o: Registered Agent, Corporation Service Company
135 North Pennsylvania St.
Suite 1610
Indianapolis, IN 46204

A lawsuit has been filed against you.

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

Craig M. Silverman
Sullivan Papain Block McGrath & Cannavo P.C.
120 Broadway, 18th Fl.
New York, NY 10271

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

CLERK OF COURT

Date: 07/25/2019

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Florida

Anthony Ciaffone

Plaintiff(s)

v.

3M Company, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) AEARO Intermediate, LLC
c/o: Registered Agent, Corporation Service Company
135 North Pennsylvania St.
Suite 1610
Indianapolis, IN 46204

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Craig M. Silverman
Sullivan Papain Block McGrath & Cannavo P.C.
120 Broadway, 18th Fl.
New York, NY 10271

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

CLERK OF COURT

Date: 07/25/2019

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Florida

Anthony Ciaffone

Plaintiff(s)

v.

3M Company, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) AEARO, LLC
c/o: Registered Agent, Corporation Service Company
135 North Pennsylvania St.
Suite 1610
Indianapolis, IN 46204

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Craig M. Silverman
Sullivan Papain Block McGrath & Cannavo P.C.
120 Broadway, 18th Fl.
New York, NY 10271

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

CLERK OF COURT

Date: 07/25/2019

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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_____, 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)*:

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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:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Florida

Anthony Ciaffone

Plaintiff(s)

v.

3M Company, et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) AEARO TECHNOLOGIES, LLC
c/o: Registered Agent, Corporation Service Company
135 North Pennsylvania St.
Suite 1610
Indianapolis, IN 46204

A lawsuit has been filed against you.

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

Craig M. Silverman
Sullivan Papain Block McGrath & Cannavo P.C.
120 Broadway, 18th Fl.
New York, NY 10271

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

CLERK OF COURT

Date: 07/25/2019

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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_____, 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

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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: