

1 Lee Cirsch (State Bar No. 227668)
2 Michael Akselrud (State Bar No. 285033)
3 THE LANIER LAW FIRM, PC
4 21550 Oxnard Street, 3rd Floor
5 Woodland Hills, CA 91367
6 Telephone: (310) 277-5100
7 Facsimile: (310) 277-5103
8 lee.cirsch@lanierlawfirm.com
9 michael.akselrud@lanierlawfirm.com

Evan D. Buxner (*Pro Hac Vice Anticipated*)
D. Todd Mathews (*Pro Hac Vice Anticipated*)
Megan Arvola (*Pro Hac Vice Anticipated*)
GORI JULIAN & ASSOCIATES, P.C.
156 N. Main St.
Edwardsville, IL, 62025
Telephone: (618) 659-9833
Facsimile: (618) 659-9834
evan@gorijulianlaw.com
todd@gorijulianlaw.com
marvola@gorijulianlaw.com

8 W. Mark Lanier (*Pro Hac Vice Anticipated*)
9 Richard Meadow (*Pro Hac Vice Anticipated*)
10 Rachel Lanier (*Pro Hac Vice Anticipated*)
11 THE LANIER LAW FIRM, PC
12 Tower 56
13 126 East 56th Street, 6th Floor
14 Telephone: (212) 421-2800
15 wml@lanierlawfirm.com
16 Richard.Meadow@lanierlawfirm.com
17 rachel.lanier@lanierlawfirm.com

18 *Attorneys for Plaintiffs*

19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**

21 **ANDREW BRIDGES,**

22 Plaintiff,

23 v.

24 **3M COMPANY,**

25 Defendants.

CASE NO.

COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL

1. Design Defect- Negligence
2. Design Defect- Strict Liability
3. Failure to Warn- Negligence
4. Breach of Express Warranty
5. Breach of Implied Warranties
6. Fraudulent Misrepresentation
7. Fraudulent Concealment
8. Negligent Misrepresentation
9. Fraud and Deceit
10. Punitive Damages

1 **COMPLAINT**

2 PLAINTIFF Andrew Bridges (“Plaintiff”), by and through the
3 undersigned counsel, brings this Complaint seeking judgment against Defendant
4 3M COMPANY; (hereinafter referred to as “Defendant,” “3M,” or “3M/Aearo”)
5 for personal injuries incurred while in training and/or on active military duty,
6 resulting from Defendant’s defective and unreasonably dangerous product, the
7 Dual-ended Combat Arms™ earplugs (Version 2 CAEv.2) (“Dual-ended Combat
8 Arms™ earplugs”). At all times relevant hereto, the Dual-ended Combat Arms™
9 earplugs were manufactured, designed, formulated, tested, packaged, labeled,
10 produced, created, made, constructed, assembled, marketed, advertised, promoted,
11 distributed, and sold by Defendant.

12 **I. INTRODUCTION**

13 1. Plaintiff, a United States Marine Corps Veteran, brings this suit to
14 recover damages arising from personal injuries sustained while in training and/or
15 on active military duty domestically and abroad. Plaintiff used Defendant’s
16 dangerously defective Dual-ended Combat Arms™ earplugs during tank firing,
17 training firing, other live fire training, vehicle maintenance, and during other
18 training and combat exercises. Defendant sold the Dual-ended Combat Arms™
19 earplugs to the U.S. military for more than a decade without the military and/or
20 Plaintiff having any knowledge of the defect(s) and failed to adequately warn the
21 military and/or Plaintiff of the defect(s). Defendant’s Dual-ended Combat Arms™
22 earplugs were standard issue in certain branches of the military (including
23 Plaintiff’s) between at least 2003 to at least 2015. Thus, Defendant’s Dual-ended
24 Combat Arms™ earplugs have likely caused thousands, if not millions, of soldiers
25 to suffer significant hearing loss, tinnitus, and additional injuries related to hearing
26 loss, including but not limited to pain and suffering and loss of the pleasures of
27 life.

28 **II. PARTIES, JURISDICTION, AND VENUE**

1 2. Plaintiff, a U.S. Marine Corps Veteran, is a citizen and resident of
2 Washington, D.C.

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

10 4. The Court has subject matter jurisdiction pursuant 28 U.S.C. §
11 1332(a)(1). The amount in controversy exceeds the sum or value of \$75,000.00,
12 exclusive of interest and costs, and Plaintiff and Defendant are citizens of different
13 states.

14 5. Personal jurisdiction over Defendant is proper because it has done
15 business in the State of California, has committed a tort in whole or in part in the
16 State of California, has substantial and continuing contact with the State of
17 California, and derives substantial revenue from goods used and consumed within
18 the State of California. In fact, there are over 30 military bases in California, that
19 include serviceman from all four branches of the military and the California
20 National Guard and Army Reserve, to which Defendant has provided its products.

21 6. Plaintiff's claims arise out of Defendant's purposeful contacts with
22 California. Plaintiff was provided and wore the defective earplugs at the Marine
23 Corps Air Ground Combat Center, also known as 29 Palms, within this District.
24 Plaintiff was also first diagnosed with hearing issues in California.

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

28 **III. FACTUAL ALLEGATIONS**

1 8. Based upon information and belief, and in part upon the pleadings and
2 allegations as contained in *United States ex rel. Moldex-Metric, Inc. v. 3M*
3 *Company*, Case No. 3:16-cv-01533-DCC (D.S.C. 2016), Plaintiff states as follows:

4 9. On July 26, 2018, Defendant agreed to pay \$9.1 million to resolve
5 allegations that it knowingly sold the Dual-ended Combat Arms™ Earplugs to the
6 United States military without disclosing defects that hampered the effectiveness
7 of the hearing protection device. See United States Department of Justice, *3M*
8 *Company Agrees to Pay \$9.1 Million to Resolve Allegations That it Supplied the*
9 *United States With Defective Dual-Ended Combat Arms Earplugs* (Jul. 26, 2018),
10 available at [https://www.justice.gov/opa/pr/3m-company-agrees-pay-91-million-](https://www.justice.gov/opa/pr/3m-company-agrees-pay-91-million-resolve-allegations-it-supplied-united-states-defective-dual)
11 [resolve-allegations-it-supplied-united-states-defective-dual](https://www.justice.gov/opa/pr/3m-company-agrees-pay-91-million-resolve-allegations-it-supplied-united-states-defective-dual) (last visited January
12 11, 2019).

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



25

26 11. If worn in the "closed" or "blocked" position (olive end in), the
27 earplugs are intended to act as a traditional earplug and block as much sound as
28 possible.

1 12. If worn in the "open" or "unblocked" position (yellow side in user's
2 ear), the earplugs are intended reduce loud impulse sounds, such as battlefield
3 explosions and artillery fire, while allowing the user to hear quieter noises; for
4 example, commands spoken by fellow soldiers and approaching enemy
5 combatants.

6 13. Defendants' standard fitting instructions state the wearer is to grasp
7 the earplug by the stem and insert it into the ear canal.

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

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

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

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

19 18. Defendant 3M acquired Aearo in 2008, including Aearo's liabilities,
20 (and thus 3M is liable for Aearo's conduct as alleged herein).

21 19. Earplugs like the Dual-ended Combat Arms™ earplugs are sold with
22 a stated Noise Reduction Rating ("NRR")¹ that should accurately reflect the
23 effectiveness of hearing protection.

24
25 ¹ Noise Reduction Rating (NRR) is a unit of measurement used to determine the effectiveness of hearing protection
26 devices to decrease sound exposure within a given working environment. Classified by their potential to reduce
27 noise in decibels (dB), a term used to categorize the power or density of sound, hearing protectors must be tested
28 and approved by the American National Standards (ANSI) in accordance with the Occupational Safety & Health
Administration (OSHA). The higher the NRR number associated with a hearing protector, the greater the potential
for noise reduction.

1 20. The military likely purchased, at a minimum, one pair of 3M's
2 Combat Arms™ earplugs for each deployed soldier annually involved in certain
3 foreign engagements between at least 2003 and at least 2015. *See* McIlwain, D.
4 Scott *et al.*, *Heritage of Army Audiology and the Road Ahead: The Army*
5 *Hearing Program*, AMERICAN JOURNAL OF PUBLIC HEALTH, Vol. 98 No.
6 12 (Dec. 2008).

7 21. 3M's/Aearo's Dual-ended Combat Arms™ earplugs were sold to the
8 military beginning in at least late 2003 and continued to be sold directly and
9 indirectly by 3M to the military until at least late 2015, when Defendant
10 discontinued the earplugs.

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

13 History of Testing

14 January 2000 Testing

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

17 24. 3M/Aearo chose to conduct the testing at its own laboratory rather
18 than an outside, independent laboratory.

19 25. 3M/Aearo's employees personally selected ten test subjects (some of
20 whom were also employees of 3M/Aearo) to test the Dual-ended Combat
21 Arms™ earplugs.

22 26. 3M/Aearo's employees intended to test: (1) the subject's hearing
23 without an earplug inserted; (2) the subject's hearing with the open/unblocked
24 (yellow) end of the Dual- ended Combat Arms™ earplug inserted; and (3) the
25 subject's hearing with the closed/blocked (olive) end of the Dual- ended Combat
26 Arms™ earplug inserted. This testing was designed to provide data regarding the
27 "NRR" of the Dual- ended Combat Arms™ earplugs.
28

1 27. 3M/Aero personnel monitored the results of each subject as the test
2 was performed and could thus stop the test if the desired NRR results were not
3 achieved.

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

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

9 30. 3M/Aero prematurely terminated the January 2000 testing of the
10 closed end of the Dual- ended Combat Arms™ earplug.

11 31. 3M/Aero personnel determined that when the closed, olive end of the
12 earplug was inserted into the wearer's ear according to standard fitting
13 instructions, the basal edge of the third flange of the open, yellow end would
14 press against the wearer's ear and fold backwards. When the inward pressure on
15 the earplug was released, the yellow side flanges would return to their original
16 shape and cause the earplug to loosen, often imperceptible to the wearer.

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

19 33. 3M/Aero personnel determined that a snug fit requires the flanges on
20 the opposite, non-inserted end of the ear plug to be folded back prior to insertion.

21 34. 3M/Aero personnel decided not to test the closed end of the Dual-
22 ended Combat Arms™ earplug for two of the ten subjects because the results
23 were well below the intended and desired NRR.

24 35. 3M/Aero completed testing of all ten subjects with the open end of
25 the Dual- ended Combat Arms™ earplug to obtain a facially invalid -2 NRR,
26 which would indicate that the closed end of the earplug actually amplified sound.

27 36. 3M/Aero represented the -2 NRR as a "0" NRR which 3M/Aero has
28 displayed on its packaging since its launch.

1 37. 3M/Aero falsely touts the “0” NRR as a benefit of the Dual- ended
2 Combat Arms™ earplug, by suggesting that soldiers will be able to hear their
3 fellow soldiers and enemies while still providing some protection. As stated
4 however, the “true” -2 NRR actually amplifies sound thereby exposing the
5 wearer to harm.

6 **February 2000 Testing**

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

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

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

15 41. 3M, however, never properly warned serviceman that the only
16 potential way to achieve this purported NRR was to modify the Dual- ended
17 Combat Arms™ earplug by folding the yellow flanges on the opposite end.

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

20 **Defendant’s Representations and Omissions**

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

24 44. From 2003-2012, 3M/Aero was the exclusive supplier of these type
25 of earplugs to the U.S. military.

26 45. 3M/Aero was aware of the design defects alleged herein in as early
27 as 2000.
28

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

4 47. 3M/Aearo knew at the time it bid for the initial IQC that the Dual-
5 ended Combat Arms™ earplugs had dangerous design defects as they would not
6 adequately protect the users from loud sounds and did not adequately warn of the
7 defects or adequately warn how to wear the earplugs.

8 48. 3M/Aero responded to the military's Requests for Proposal ("RFP")
9 with express certifications that it complied with the Salient Characteristics of
10 Medical Procurement Item Description ("MPID") of Solicitation No. SP0200-06-
11 R-4202.

12 49. 3M/Aearo knew at the time it made its certifications that the earplugs
13 did not comply with the MPID.

14 50. 3M/Aearo knew the design defects could cause the earplugs to loosen
15 in the wearer's ear, imperceptibly to the wearer and even trained audiologists
16 visually observing a wearer, thereby permitting damaging sounds to enter the ear
17 canal by traveling around the outside of the earplug, while the user and/or
18 audiologist incorrectly believes that the earplug is working as intended.

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

21
22 2.1.1 Ear plugs shall be designed to provide protection
23 from the impulse noises created by military firearms,
24 while allowing the wearer to clearly hear normal speech
and other quieter sounds, such as voice commands, on the
battlefield.

25 2.2.2. The sound attenuation of both ends of the ear plugs shall be
26 tested in accordance with ANSI S3.19.

27 2.4 Workmanship. **The ear plugs shall be free from all**
28 **defects that detract from their appearance or impair**

1 **their serviceability.**

2 **2.5 Instructions. Illustrated instructions explaining the proper**
3 **use and handling of the ear plugs shall be supplied with each**
4 **unit.**

5 Solicitation No. SP0200-06-R-4202 at 41-42. Emphasis added.

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

11
12 The value of sound attenuation to be used in the
13 calculation of the Noise Reduction Rating must be
14 determined according to the "Method for the Measurement
15 of Real-Ear Protection of Hearing Protectors and Physical
16 Attenuation of Earmuffs." This standard is approved as the
17 American National Standards Institute Standard (ANSI-
18 STD) S3.19- 1974.

19 53. Additionally, 40 C.F.R. § 211.204-4(e), of the EPA regulations
20 requires certain "supporting information" must accompany hearing protection
21 devices sold in the United States:

22 The following minimum supporting information must
23 accompany the device in a manner that insures its
24 availability to the prospective user. In the case of bulk
25 packaging and dispensing, such supporting information
26 must be affixed to the bulk container or dispenser in the
27 same manner as the label, and in a readily visible
28 location. . . **Instructions as to the proper insertion or
placement of the device.** (emphasis added).

1 54. 3M/Aearo knowingly used the deliberately flawed retest of the
2 closed end of the earplugs to sell Dual-ended Combat Arms™ earplugs to the
3 military with the representation that they possess a "22" NRR in the closed
4 position.

5 55. Defendant includes standard instructions for "proper use" of the
6 earplugs in the packaging for the earplugs as required by the EPA, Noise
7 Control Act, and the MPID.

8 56. Defendant's standard instructions for "proper use" of its Dual-ended
9 Combat Arms™ earplugs do not instruct wearers to fold back the flanges of the
10 opposite end before inserting the plug into the ear.

11 57. Instead, Defendant improperly instructs wearers to simply insert the
12 earplugs into the ear canal.

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

18 59. 3M's/Aearo's packaging and marketing of such earplugs with a
19 labeled NRR of "22" thereby misleads the wearer and has likely caused
20 thousands of soldiers to suffer significant hearing loss and tinnitus in addition to
21 exposing millions more to the risk caused by 3M/Aearo's defective earplugs.

22 60. Despite knowing that its flawed testing involved steps to manipulate
23 the fit of the earplug, 3M's/Aearo's standard instructions for use of the earplugs
24 do not instruct, and never have instructed, the wearer to fold back the flanges on
25 the open end of the plug before inserting the closed end of the plug into their
26 ears (which is necessary to achieve the "22" NRR and avoid the defect
27 associated with the short stem).

28

1 61. 3M's/Aearo's instructions instead have provided standard fitting
2 instructions for inserting the earplug on both ends which are facially inadequate.

3 62. 3M/Aearo was aware prior to selling the earplugs to the military,
4 testing procedures and fitting instructions were unlawfully manipulated to obtain
5 the NRRs it wanted on both ends of the Dual-ended Combat Arms™ earplug,
6 and 3M/Aearo continued to use these inaccurate NRRs to market the earplugs to
7 the military for more than ten years without disclosing the design defect in the
8 plugs.

9 63. Plaintiff reserves the right to supplement these facts after discovery.

10
11 **Plaintiff Andrew Bridges**

12 64. Plaintiff joined the military in August of 2006 at the age of 18 and
13 was discharged in August of 2010.

14 65. Prior to joining the military, Plaintiff had no signs or symptoms of
15 hearing loss or tinnitus.

16 66. In February of 2009, Plaintiff was deployed for active duty to Iraq.

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

19 68. The Dual-ended Combat Arms™ earplugs were provided to Plaintiff.

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

22 70. Plaintiff wore the Dual-ended Combat Arms™ earplugs while in
23 training and in the field.

24 71. Plaintiff wore the earplugs at 29 Palms while firing weapons.

25 72. Plaintiff was never instructed to fold back the flanges on the opposite
26 side of use of the earplug.

27 73. Plaintiff was first diagnosed with hearing issues in July of 2010 at 29
28 Palms.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CAUSES OF ACTION

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

74. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows:

75. 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 ArmsTM with reasonable and due care for the safety and well-being of U.S. military service men and women, including Plaintiff, who were subject to and used the Dual-ended Combat ArmsTM earplugs during their service with the U.S. military.

76. Plaintiff was a foreseeable user of the Dual-ended Combat ArmsTM earplugs and Defendant knew that the Dual-ended Combat ArmsTM earplugs would be used by U.S. military service men and women, including Plaintiff.

77. The Dual-ended Combat ArmsTM 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.

78. When the Dual-ended Combat ArmsTM is inserted into the ear according to standard fitting instructions, a proper seal is not formed with the ear canal.

79. 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

1 dangerous sounds can bypass the plug altogether thereby posing serious risk to
2 the wearer's hearing unbeknownst to him or her.

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

- 6
- 7 a. Defendant failed to design the Dual-ended Combat ArmsTM in
8 a manner which would result in a NRR of "22" when used with
9 the closed, olive end inserted, according to the standard fitting
10 instructions provided by Defendant.
 - 11 b. Defendant failed to properly and thoroughly test the Dual-
12 ended Combat ArmsTM earplugs;
 - 13 c. Defendant failed to properly and thoroughly analyze the data
14 resulting from testing of the Dual-ended Combat ArmsTM
15 earplugs;
 - 16 d. Defendant designed, manufactured, distributed, and sold the
17 Dual-ended Combat ArmsTM earplugs without an adequate
18 warning of the significant and dangerous risks of the earplugs;
 - 19 e. Defendant designed, manufactured, distributed, and sold the
20 Dual-ended Combat ArmsTM earplugs without providing proper
21 instructions to avoid the harm which could foreseeably occur
22 because of using the earplugs in the manner the Defendant's
23 standard fitting instructions directed;
 - 24 f. Defendant failed to fulfill the standard of care required of a
25 reasonable and prudent manufacturer of hearing protection
26 products, specifically including products such as the Dual-
27 ended Combat ArmsTM earplugs; and
 - 28 g. Defendant negligently continued to manufacture and distribute
the Dual-ended Combat ArmsTM earplugs (Version 2 CAEv.2)
to the U.S. military after Defendant knew or should have
known of its adverse effects and/or the availability of safer
designs.

1 81. Defendant knew or should have known that the defective condition
2 of the Dual-ended Combat Arms™ earplugs made it unreasonably dangerous
3 to the U.S. military service men and women who used the earplugs.

4 82. The Dual-ended Combat Arms™ earplugs were dangerous when
5 used by ordinary U.S. military service men and women who used it with the
6 knowledge common to the U.S. military as to the product's characteristics and
7 common usage.

8 83. Defendant knew or should have known of the defective design at
9 the time the Dual-ended Combat Arms™ earplugs were used by Plaintiff.

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

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

16 86. As designers, developers, manufacturers, inspectors, advertisers,
17 distributors, and suppliers, of the Dual-ended Combat Arms™ earplugs,
18 Defendant had superior knowledge of the Dual-ended Combat Arms™
19 earplugs and owed a duty of care to Plaintiff.

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

23 88. The Dual-ended Combat Arms™ earplugs were the proximate
24 cause of Plaintiff's personal injuries – specifically Plaintiff's sensorineural
25 hearing loss and tinnitus. Defendant's conduct was a substantial factor in
26 bringing about the injuries sustained by Plaintiff because 3M designed,
27 manufactured, tested, sold, and distributed the Dual-ended Combat Arms™
28 earplugs to the U.S. military.

1 89. As a direct and proximate result of Defendant's negligence in
2 designing the defective Dual-ended Combat Arms™ earplugs, Plaintiff was
3 caused to sufferer serious and dangerous side effects, including sensorineural
4 hearing loss and tinnitus, and has further suffered the injuries and damages as
5 alleged herein.

6 WHEREFORE, Plaintiff demands judgment against Defendant and requests
7 compensatory damages, punitive damages, together with interest, costs of suit,
8 attorneys' fees, and such further relief as the Court deems equitable and just.

9
10 **Second Cause of Action**
Design Defect- Strict Liability

11 90. Plaintiff incorporates by reference all preceding paragraphs as if
12 fully set forth herein and further alleges as follows:

13 91. Plaintiff was a foreseeable user of the Dual-ended Combat
14 Arms™ earplugs.

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

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

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

25 95. The Dual-ended Combat Arms™ earplugs were dangerous to an
26 extent beyond which would be contemplated by the ordinary user who
27 purchased the device because the design of the Dual-ended Combat Arms™
28

1 earplugs allow for dangerous sounds to bypass the plug altogether, thereby
2 posing a serious risk to a U.S military service members' hearing unbeknownst
3 to him or her.

4 96. Defendant knew of the defective design at the time the Dual-
5 ended Combat ArmsTM earplugs were provided to Plaintiff.

6 97. At the time the Dual-ended Combat ArmsTM earplugs left
7 Defendant's possession, the Dual-ended Combat ArmsTM earplugs were
8 defective and were in a condition which made them unreasonably dangerous
9 to the ordinary U.S. military service member who used them.

10 98. At all relevant times, Plaintiff used the Dual-ended Combat
11 ArmsTM earplugs in the manner in which they were intended.

12 99. The Dual-ended Combat ArmsTM earplugs were the proximate
13 cause of Plaintiff's hearing loss and tinnitus because the short -stem design of
14 the earplugs allow for dangerous sounds to bypass the plug altogether thereby
15 posing a serious risk to Plaintiff's hearing unbeknownst to him.

16 100. Defendant's conduct was a substantial factor in bringing about
17 Plaintiff's personal injuries because Defendant designed, tested,
18 manufactured, sold, and distributed the Dual-ended Combat ArmsTM earplugs
19 that caused Plaintiff's hearing loss and tinnitus.

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

24 WHEREFORE, Plaintiff demands judgment against Defendant and
25 requests compensatory damages, punitive damages, together with interest,
26 costs of suit, attorneys' fees, and such further relief as the Court deems
27 equitable and just.

28

Third Cause of Action
Failure to Warn–Negligence

1
2
3 102. Plaintiff incorporates by reference all preceding paragraphs as if
4 fully set forth herein and further alleges as follows:

5 103. At all times relevant to this action, Defendant had a duty to
6 manufacture, design, formulate, test, package, label, produce, create, make,
7 construct, assemble, market, advertise, promote, and distribute, the Dual-
8 ended Combat ArmsTM with reasonable and due care for the safety and well-
9 being of U.S. military service men and women, including Plaintiff, who were
10 subject to and used the Dual-ended Combat ArmsTM earplugs during their
11 service with the U.S. military.

12 104. Plaintiff was a foreseeable user of the Dual-ended Combat ArmsTM
13 earplugs.

14 105. The Dual-ended Combat ArmsTM earplugs are defective, in part, in
15 that the design of the earplug causes them to loosen in the wearer's ear,
16 imperceptibly to the wearer, thereby permitting damaging sounds to enter the
17 ear canal by traveling around the outside of the earplug while the user
18 incorrectly believes that the earplug is working as intended

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

24 107. The warnings and instructions that accompanied the Dual-ended
25 Combat ArmsTM earplugs failed to provide that level of information that an
26 ordinary consumer would expect when using the Dual-ended Combat ArmsTM
27 earplugs in a manner reasonably foreseeable to Defendant.

28 108. Had Plaintiff received a proper or adequate warning as to the

1 risks associated with the Dual-ended Combat Arms™ earplugs, he would not
2 have used the Dual-ended Combat Arms™ earplugs.

3 109. The Dual-ended Combat Arms™ earplugs were the proximate
4 cause of Plaintiff's hearing loss and tinnitus because design of the earplugs
5 allows for dangerous sounds to bypass the plug altogether thereby posing a
6 serious risk to Plaintiff's hearing unbeknownst to him.

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

11 WHEREFORE, Plaintiff demands judgment against Defendant and
12 requests compensatory damages, punitive damages, together with interest, costs
13 of suit, attorneys' fees, and such further relief as the Court deems equitable and
14 just.

15
16 **Fourth Cause of Action**
17 **Breach of Express Warranty**

18 111. Plaintiff incorporates by reference all preceding paragraphs as if
19 fully set forth herein and further alleges as follows:

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

26 113. These warranties came in one or more of the following forms: (i)
27 publicly made written and verbal assurances of safety; (ii) press releases and
28 dissemination via the media, or uniform promotional information that was

1 intended to create a demand for the Dual-ended Combat ArmsTM earplugs (but
2 which contained material misrepresentations and utterly failed to warn of the
3 risks of the Dual-ended Combat ArmsTM earplugs); (iii) verbal assurances made
4 by Defendant's consumer relations personnel about the safety of the Dual-ended
5 Combat ArmsTM earplugs which also downplayed the risks associated with the
6 Dual-ended Combat ArmsTM earplugs; and, (iv) false and misleading written
7 information and packaging supplied by Defendant.

8 114. When Defendant made these express warranties, it knew the
9 purpose(s) for which the Dual-ended Combat ArmsTM earplugs were to be used
10 and warranted it to be in all respects safe and proper for such purpose(s).

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

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

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

23 118. As a direct and proximate result of Defendant's breach of the
24 express warranties, Plaintiff was caused to sufferer serious and dangerous side
25 effects, including sensorineural hearing loss and tinnitus, and has further
26 suffered the injuries and damages as alleged herein.

27 WHEREFORE, Plaintiff demands judgment against Defendant and
28 requests compensatory damages, punitive damages, together with interest, costs

1 of suit, attorneys' fees, and such further relief as the Court deems equitable and
2 just.

3
4 **Fifth Cause of Action**
5 **Breach of Implied Warranties**

6 119. Plaintiff incorporates by reference all preceding paragraphs as if fully
7 set forth herein and further alleges as follows:

8 120. At the time Defendant marketed, sold, and distributed the Dual-ended
9 Combat ArmsTM earplugs, Defendant knew of the use for which the Dual-ended
10 Combat ArmsTM earplugs were intended and impliedly warranted the Dual-ended
11 Combat ArmsTM earplugs to be fit for a particular purpose and warranted that the
12 Dual-ended Combat ArmsTM earplugs were of merchantable quality and effective
13 for such use.

14 121. Defendant knew, or had reason to know, that Plaintiff would rely on
15 Defendant's judgment and skill in providing the Dual-ended Combat ArmsTM
16 earplugs for its intended use.

17 122. Plaintiff reasonably relied upon the skill and judgment of Defendant
18 as to whether the Dual-ended Combat ArmsTM earplugs were of merchantable
19 quality, safe, and effective for its intended use.

20 123. Contrary to such implied warranties, the Dual-ended Combat ArmsTM
21 earplugs were neither of merchantable quality, nor safe or effective for its
22 intended use, because the Dual-ended Combat ArmsTM earplugs were, and are,
23 unreasonably dangerous, defective, unfit and ineffective for the ordinary purposes
24 for which the Dual-ended Combat ArmsTM earplugs were used.

25 124. As a direct and proximate result of Defendant's breach of implied
26 warranties, Plaintiff was caused to sufferer serious and dangerous side effects,
27 including sensorineural hearing loss and tinnitus, and has further suffered the
28

1 injuries and damages as alleged herein.

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests
3 compensatory damages, punitive damages, together with interest, costs of suit,
4 attorneys' fees, and such further relief as the Court deems equitable and just.

5
6 **Sixth Cause of Action**
7 **Fraudulent Misrepresentation**

8 125. Plaintiff incorporates by reference all preceding paragraphs as if fully
9 set forth herein and further alleges as follows:

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

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

16 128. The representations made by Defendant were, in fact, false.

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

20 130. These representations were made by said Defendant with the intent of
21 defrauding and deceiving Plaintiff and the public in general, and were made with
22 the intent of inducing Plaintiff and the public in general, to recommend,
23 purchase, and/or use the Dual-ended Combat Arms™ earplugs, all of which
24 evinced a callous, reckless, willful, depraved indifference to the health, safety
25 and welfare of Plaintiff herein.

26 131. At the time the aforesaid representations were made by Defendant
27 and, at the time Plaintiff used the Dual-ended Combat Arms™ earplugs, Plaintiff
28

1 was unaware of the falsity of said representations and reasonably believed them
2 to be true.

3 132. In reliance upon said representations, Plaintiff was induced to and did
4 use Dual-ended Combat Arms™ earplugs, thereby sustaining severe and
5 permanent personal injuries.

6 133. Said Defendant knew and was aware or should have been aware that
7 the Dual-ended Combat Arms™ earplugs had not been sufficiently tested, were
8 defective in nature, and/or that they lacked adequate and/or sufficient
9 instructions.

10 134. Defendant knew or should have known that the Dual-ended Combat
11 Arms™ earplugs had a potential to, could, and would cause severe and grievous
12 injury to the users of said product.

13 135. Defendant brought the Dual-ended Combat Arms™ earplugs to the
14 market, and acted fraudulently, wantonly and maliciously to the detriment of
15 Plaintiff.

16 136. As a result of the foregoing acts and omissions, Plaintiff was caused
17 to sufferer serious and dangerous side effects including, sensorineural hearing
18 loss and tinnitus, and has further suffered the injuries and damages as alleged
19 herein.

20 WHEREFORE, Plaintiff demands judgment against Defendant and
21 requests compensatory damages, punitive damages, together with interest, costs
22 of suit, attorneys' fees, and such further relief as the Court deems equitable and
23 just.

24 **Seventh Cause of Action**
25 **Fraudulent Concealment**

26 137. Plaintiff incorporates by reference all preceding paragraphs as if fully
27 set forth herein and further alleges as follows:
28

1 138. At all times relevant, Defendant misrepresented the safety and
2 efficacy of the Dual-ended Combat Arms™ earplugs for their intended use.

3 139. Defendants knew or were reckless in not knowing that their
4 representations were false.

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

7
8 (a) that testing of the Dual-ended Combat Arms™ earplug was
deliberately flawed;

9
10 (b) the amount of hearing protection provided by the Combat
Arms™ earplug;

11
12 (c) that Defendant was aware of the defects in the Dual-ended Combat
Arms™ earplug;

13
14 (d) that the Dual-ended Combat Arms™ earplug was defective, and
15 would cause dangerous side effects, including but not limited to
hearing damage or impairment;

16
17 (e) that the Dual-ended Combat Arms™ earplug was manufactured
negligently;

18
19 (f) that the Dual-ended Combat Arms™ earplug was manufactured
defectively;

20
21 (g) that the Dual-ended Combat Arms™ earplug was designed
defectively;

22
23 (h) that the Dual-ended Combat Arms™ earplug was designed
negligently; and,

24
25 (i) that the Dual-ended Combat Arms™ earplug was designed
improperly.

26
27 141. Defendant was under a duty to disclose to Plaintiff the defective
28 nature of the dual-end Combat Arms™ earplug.

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

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

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

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

19 WHEREFORE, Plaintiff demands judgment against Defendant and requests
20 compensatory damages, punitive damages, together with interest, costs of suit,
21 attorneys' fees, and such further relief as the Court deems equitable and just.

22
23 **Eighth Cause of Action**
24 **Negligent Misrepresentation**

25 146. Plaintiff incorporates by reference all preceding paragraphs as if fully
26 set forth herein and further alleges as follows:
27
28

1 147. Defendant had a duty to represent to Plaintiff and the public in general
2 that the Dual-ended Combat Arms™ earplug had been properly tested and found
3 to be effective.

4 148. Defendant was aware its testing procedures and fitting instructions
5 were unlawfully manipulated.

6 149. The representations made by Defendant were, in fact, false.

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

12 151. Defendant breached its duty in representing the Dual-ended Combat
13 Arms™ earplug's serious defects to Plaintiff.

14 152. As a result of the foregoing acts and omissions, Plaintiff was caused
15 to sufferer serious and dangerous side effects including, sensorineural hearing
16 loss and tinnitus, and has further suffered the injuries and damages as alleged
17 herein.

18 WHEREFORE, Plaintiff demands judgment against Defendant and requests
19 compensatory damages, punitive damages, together with interest, costs of suit,
20 attorneys' fees, and such further relief as the Court deems equitable and just.

21
22 **Ninth Cause of Action**
23 **Fraud and Deceit**

24 153. Plaintiff incorporates by reference all preceding paragraphs as if fully
25 set forth herein and further alleges as follows:

26 154. Defendant conducted unlawful and improper testing on the Dual-
27 ended Combat Arms™ earplug.
28

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

5 156. As a result of Defendant's unlawful and improper testing, Defendant
6 intentionally omitted and misrepresented certain test results to Plaintiff.

7 157. Defendant had a duty when disseminating information to the public to
8 disseminate truthful information and a parallel duty not to deceive the public and
9 Plaintiff.

10 158. The information distributed to Plaintiff by Defendant contained
11 material representations of fact and/or omissions concerning the hearing
12 protection provided by the Dual-ended Combat Arms™ earplug.

13 159. These representations were all false and misleading.

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

17 161. That it was the purpose of Defendant in making these representations
18 to deceive and defraud the public and/or Plaintiff, to gain the confidence of the
19 public, and/or Plaintiff, to falsely ensure the quality and fitness for use of the
20 Dual-ended Combat Arms™ earplug and induce the public, and/or Plaintiff to
21 purchase, request, dispense, recommend, and/or continue to use the Dual-ended
22 Combat Arms™ earplug.

23 162. Defendant made the aforementioned false claims and false
24 representations with the intent of convincing the public and/or Plaintiff that the
25 Dual-ended Combat Arms™ earplug was fit and safe for use.

26 163. That these representations and others made by Defendant were false
27 when made, and/or were made with a pretense of actual knowledge when
28

1 knowledge did not actually exist, and/or were made recklessly and without regard
2 to the actual facts.

3 164. That these representations and others, made by Defendant, were made
4 with the intention of deceiving and defrauding Plaintiff, and were made in to
5 induce Plaintiff to rely upon misrepresentations and caused Plaintiff to purchase,
6 use, rely on, request, dispense, and/or recommend the Dual-ended Combat
7 Arms™ earplug.

8 165. That Defendant, recklessly and intentionally falsely represented the
9 dangerous and serious health and/or safety concerns of the Dual-ended Combat
10 Arms™ earplug to the public at large, Plaintiff in particular, for the purpose of
11 influencing the marketing of a product known to be dangerous and defective
12 and/or not as safe as other alternatives.

13 166. That Defendant willfully and intentionally failed to disclose the
14 material facts regarding the dangerous and serious safety concerns of Dual-ended
15 Combat Arms™ earplug by concealing and suppressing material facts regarding
16 the dangerous and serious health and/or safety concerns of Dual-ended Combat
17 Arms™ earplug.

18 167. That Defendant willfully and intentionally failed to disclose the truth,
19 failed to disclose material facts and made false representations with the purpose
20 and design of deceiving and lulling Plaintiff, into a sense of security so that
21 Plaintiff would rely on the representations made by Defendant, and purchase, use
22 and rely on the Dual-ended Combat Arms™ earplug.

23 168. That Plaintiff did in fact rely on and believe the Defendant's
24 representations to be true at the time they were made and relied upon the
25 representations and were thereby induced to use and rely on the Dual-ended
26 Combat Arms™ earplug.

1 169. That at the time the representations were made, Plaintiff did not know
2 the truth regarding the dangerous and serious safety concerns of the Dual-ended
3 Combat Arms™ earplug.

4 170. That Plaintiff did not discover the true facts with respect to the
5 dangerous and serious health and/or safety concerns, and the false representations
6 of Defendants, nor could Plaintiff with reasonable diligence have discovered the
7 true facts.

8 171. That had Plaintiff known the true facts with respect to the dangerous
9 and serious health and/or safety concerns of Dual-ended Combat Arms™
10 earplug, Plaintiff would not have used and/or relied on the Dual-ended Combat
11 Arms™ earplug.

12 172. That Defendant's aforementioned conduct constitutes fraud and
13 deceit, and was committed and/or perpetrated willfully, wantonly and/or
14 purposefully on Plaintiff.

15 173. As a result of the foregoing acts and omissions, Plaintiff was caused
16 to sufferer serious and dangerous side effects including, sensorineural hearing
17 loss and tinnitus, and has further suffered the injuries and damages as alleged
18 herein.

19 WHEREFORE, Plaintiff demands judgment against Defendant and requests
20 compensatory damages, punitive damages, together with interest, costs of suit,
21 attorneys' fees, and such further relief as the Court deems equitable and just.

22
23 **Tenth Cause of Action**
24 **Punitive Damages**

25 174. Plaintiff incorporates by reference all preceding paragraphs as if fully
26 set forth herein and further alleges as follows:

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

- 1
- 2 a. By failing to disclose material facts regarding the dangerous and
- 3 serious safety concerns of Dual-ended Combat Arms™ earplug by
- 4 concealing and suppressing material facts regarding the dangerous
- 5 and serious health and/or safety concerns of Dual-ended Combat
- 6 Arms™ earplug;
- 7 b. By failing to disclose the truth and making false representations
- 8 with the purpose and design of deceiving and lulling Plaintiffs, and
- 9 others, so that they would use and rely upon the Dual-ended
- 10 Combat Arms™ earplug;
- 11 c. By falsely representing the dangerous and serious health and/or
- 12 safety concerns of the Dual-ended Combat Arms™ earplug to the
- 13 public at large, and Plaintiff in particular.

14 WHEREFORE, Plaintiff demands judgment against Defendant and requests

15 compensatory damages, punitive damages, together with interest, costs of suit,

16 attorneys' fees, and such further relief as the Court deems equitable and just.

17 **V. TIMELINESS AND TOLLING OF STATUTES OF LIMITATIONS**

18 176. Plaintiff filed this lawsuit within the applicable limitations period of

19 first suspecting that the Dual-ended Combat Arms™ earplugs caused his

20 injuries. Plaintiff could not, by the exercise of reasonable diligence, have

21 discovered the wrongful cause of the Dual-ended Combat Arms™ earplugs-

22 induced injuries at an earlier time, because, at the time of these injuries, the

23 cause was unknown to Plaintiff. Plaintiff did not suspect, nor did Plaintiff have

24 reason to suspect, the cause of these injuries, or the tortious nature of the

25 conduct causing these injuries, until less than the applicable limitations period

26 prior to the filing of this action.

27 177. Furthermore, the running of any statute of limitations has been tolled

28 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.

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

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

11 180. Additionally, pursuant to the Servicemembers Civil Relief Act, the
12 period of Plaintiff's military service may not be included in computing any
13 statute of limitations applicable herein. *See* 50 U.S.C. § 3936

14
15 **VI. JURY DEMAND**

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

17
18 **VII. PRAAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays as follows:

- 20 i. That process issue according to law;
- 21 ii. That Defendant be duly served and cited to appear and answer
22 herein, and that after due proceedings are had, that there be judgment in favor
23 of Plaintiff and against Defendant for the damages set forth below, along with
24 court costs, pre-judgment and post-judgment interest at the legal rate;
- 25 iii. Pain and suffering (past and future);
- 26 iv. Wage loss (past and future);
- 27 v. Loss of earnings and loss of earning capacity;
- 28 vi. Medical expenses (past and future);

- 1 vii. Loss of enjoyment of life (past and future);
2 viii. Mental anguish and distress (past and future);
3 ix. Disfigurement (past and future);
4 x. Physical impairment (past and future);
5 xi. Attorney's fees;
6 xii. Punitive or exemplary damages in such amounts as may be proven at
7 trial; and
8 xiii. For all such other relief as to which Plaintiff may show himself justly
9 entitled.

10
11
12
13 Dated: January 15, 2019

Respectfully submitted,

14 /s Lee Cirsch

15 Lee Cirsch (SBN 227668)
16 THE LANIER LAW FIRM, PC
17 21550 Oxnard St., 3rd Floor
18 Woodland Hills, CA 91367
19 Telephone: (310) 277-5100
20 Facsimile: (310) 277-5103
21 Lee.Cirsch@lanierlawfirm.com

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Andrew Bridges	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) 3M Company
(b) County of Residence of First Listed Plaintiff <u>Washington, DC</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant <u>Ramsey, MN</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. The Lanier Law Firm, P.C., 21550 Oxnard Street, 3rd Floor, Woodland Hills, CA 91367 (310) 277-5100	Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1. U.S. Government Plaintiff <input type="checkbox"/> 2. U.S. Government Defendant <input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant) <table style="width:100%; border: none;"> <tr> <td style="border: none;">Citizen of This State</td> <td style="border: none; text-align: center;">PTF DEF</td> <td style="border: none;"> <input type="checkbox"/> 1 <input type="checkbox"/> 1 </td> <td style="border: none;">Incorporated or Principal Place of Business in this State</td> <td style="border: none; text-align: center;">PTF DEF</td> <td style="border: none;"> <input type="checkbox"/> 4 <input type="checkbox"/> 4 </td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"> <input checked="" type="checkbox"/> 2 <input type="checkbox"/> 2 </td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"> <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 </td> <td colspan="2" style="border: none;"></td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"> <input type="checkbox"/> 3 <input type="checkbox"/> 3 </td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"> <input type="checkbox"/> 6 <input type="checkbox"/> 6 </td> <td colspan="2" style="border: none;"></td> </tr> </table>	Citizen of This State	PTF DEF	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF DEF	<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		
Citizen of This State	PTF DEF	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF DEF	<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. 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

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ 75,001.00

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 28 USC 1332

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<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/ICC Rates/Etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. <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 Info. Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State 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 Loan (Excl. Vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Vet. 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 <div style="background-color: #e0e0e0; text-align: center; font-weight: bold; margin-top: 5px;">REAL PROPERTY</div> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <div style="background-color: #e0e0e0; text-align: center; font-weight: bold; margin-top: 5px;">TORTS</div> <div style="background-color: #e0e0e0; text-align: center; font-weight: bold; margin-top: 5px;">PERSONAL INJURY</div> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. 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-Med Malpractice <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	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <div style="background-color: #e0e0e0; text-align: center; font-weight: bold; margin-top: 5px;">TORTS</div> <div style="background-color: #e0e0e0; text-align: center; font-weight: bold; margin-top: 5px;">PERSONAL PROPERTY</div> <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 <div style="background-color: #e0e0e0; text-align: center; font-weight: bold; margin-top: 5px;">BANKRUPTCY</div> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <div style="background-color: #e0e0e0; text-align: center; font-weight: bold; margin-top: 5px;">CIVIL RIGHTS</div> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 American with Disabilities-Employment <input type="checkbox"/> 446 American with Disabilities-Other <input type="checkbox"/> 448 Education	<div style="background-color: #e0e0e0; text-align: center; font-weight: bold; margin-top: 5px;">Habeas Corpus:</div> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <div style="background-color: #e0e0e0; text-align: center; font-weight: bold; margin-top: 5px;">Other:</div> <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee Conditions of Confinement <div style="background-color: #e0e0e0; text-align: center; font-weight: bold; margin-top: 5px;">FORFEITURE/PENALTY</div> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <div style="background-color: #e0e0e0; text-align: center; font-weight: bold; margin-top: 5px;">LABOR</div> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. 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 Ret. Inc. Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <div style="background-color: #e0e0e0; text-align: center; font-weight: bold; margin-top: 5px;">SOCIAL SECURITY</div> <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)) <div style="background-color: #e0e0e0; text-align: center; font-weight: bold; margin-top: 5px;">FEDERAL TAX SUITS</div> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

QUESTION A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	STATE CASE WAS PENDING IN THE COUNTY OF: <input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino	INITIAL DIVISION IN CACD IS: Western Southern Eastern
--	---	--

QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question C. If "yes," answer Question B.1, at right.	B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co.? <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question B.2.
B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.	

QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," skip to Question D. If "yes," answer Question C.1, at right.	C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.? <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Continue to Question C.2.
C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) <i>check one of the boxes to the right</i> →	<input type="checkbox"/> YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there. <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.	

QUESTION D: Location of plaintiffs and defendants?	A. Orange County	B. Riverside or San Bernardino County	C. Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

D.1. Is there at least one answer in Column A? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →	D.2. Is there at least one answer in Column B? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓
---	---

QUESTION E: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, C, or D above: →	Western

QUESTION F: Northern Counties?
Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed **in this court**?

NO YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed **in this court**?

NO YES

If yes, list case number(s): _____

Civil cases are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

- A. Arise from the same or a closely related transaction, happening, or event;
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): /s/ Lee Cirsch

DATE: 1/15/2019

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

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: