

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CHRISTOPHER HAMBAUGH, MATTHEW)	Case No. _____
KUHN, & RYAN FRANKS, Individually and)	
on Behalf of All Others Similarly Situated,)	
Plaintiffs,)	CLASS ACTION
vs.)	COMPLAINT
3M COMPANY,)	
Defendant.)	TRIAL JURY DEMAND
_____)	

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Plaintiffs Christopher Hambaugh (“Hambaugh”), Matthew Kuhn (“Kuhn”), and Ryan Franks (“Franks”) (collectively, “Plaintiffs”), by and through undersigned counsel, bring this Complaint seeking judgment against Defendant 3M Company (“Defendant” or “3M”) for permanent personal injuries incurred while in training and/or on active military duty domestically and abroad, resulting from Defendant’s defective and unreasonably dangerous product, the Dual-ended Combat Arms™ earplugs (Version 2 CAEv.2) (“Dual-ended Combat Arms earplugs” or “Earplugs”). Based upon information and belief, Plaintiffs state as follows:

I. NATURE OF ACTION

1. Plaintiffs all served in the military between 2000 and 2016.
2. 3M sold its Dual-ended Combat Arms earplugs to certain branches of the military, including Plaintiffs, from at least 2003 to 2015. The Earplugs were standard issue in those branches during the relevant time period.
3. The Earplugs, which were supposed to protect service members’ hearing during loud training and field operations, contained a defect that not only caused the product to malfunction but, in fact, amplified loud noises.
4. 3M knowingly sold the defective Earplugs to the U.S. military for more than a decade without the military and/or Plaintiffs having any knowledge, or way to learn, of the defect(s), and failed to adequately warn the military and/or Plaintiffs of the defect(s).
5. Plaintiffs used Defendant’s dangerously defective Dual-ended Combat Arms earplugs during the course of their employment with the U.S. military, including during tank firing, training firing, other live fire training, vehicle maintenance, and other training and combat exercises.

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6. Plaintiffs were all diagnosed with hearing loss. Prior to diagnosis and Plaintiffs' use of the Dual-ended Combat Arms earplugs, Plaintiffs had never suffered from hearing loss or tinnitus.

7. Defendant's Dual-ended Combat Arms earplugs have likely caused thousands, if not millions, of soldiers to suffer significant hearing loss, tinnitus, and additional injuries related to hearing loss, including, but not limited to, pain and suffering and loss of the pleasures of life.

8. Plaintiffs bring the instant case to recover for their own losses and to hold 3M accountable for its actions.

II. PARTIES, JURISDICTION, AND VENUE

9. Plaintiff Hambaugh, a U.S. Marine Veteran, is a citizen and resident of Florida.

10. Hambaugh joined the military in 1994 and was discharged in 2015.

11. Hambaugh was deployed for active duty in Iraq and Afghanistan.

12. At the time of Hambaugh's deployment and during his pre-deployment training, the Dual-ended Combat Arms earplugs were standard issue.

13. Hambaugh was provided with the Dual-ended Combat Arms earplugs for his exclusive use while he was deployed and during his pre-deployment training.

14. Hambaugh wore the Dual-ended Combat Arms earplugs while in training and in the field, including while firing weapons in Iraq and Afghanistan.

15. During his entire time of use, Hambaugh was never instructed to fold back the flanges on the opposite side of each of the Earplugs.

16. Hambaugh was first diagnosed with hearing issues in approximately 2015. Prior to joining the military, Hambaugh had no signs or symptoms of hearing loss or tinnitus.

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17. Plaintiff Kuhn, a U.S. Army veteran, is a citizen and resident of Texas.

18. Kuhn joined the military in 2006 and was discharged in 2012.

19. Kuhn was deployed for active duty in Afghanistan.

20. At the time of Kuhn's deployment and during his pre-deployment training, the Dual-ended Combat Arms earplugs were standard issue.

21. Kuhn was provided with the Dual-ended Combat Arms earplugs for his exclusive use while he was deployed and during his pre-deployment training.

22. Kuhn wore the Dual-ended Combat Arms earplugs while in training and in the field, including while firing weapons in Afghanistan.

23. During his entire time of use, Kuhn was never instructed to fold back the flanges on the opposite side of each of the Earplugs.

24. Kuhn was first diagnosed with hearing issues in approximately 2007. Prior to joining the military, Kuhn had no signs or symptoms of hearing loss or tinnitus.

25. Plaintiff Franks, a U.S. Army veteran, is a citizen and resident of Washington.

26. Franks joined the military in 2006 and was discharged in 2012.

27. Franks was deployed for active duty in Afghanistan.

28. At the time of Frank's deployment and during his pre-deployment training, the Dual-ended Combat Arms earplugs were standard issue.

29. Franks was provided with the Dual-ended Combat Arms earplugs for his exclusive use while he was deployed and during his pre-deployment training.

30. Franks wore the Dual-ended Combat Arms earplugs while in training and in the field, including while firing weapons in Afghanistan.

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31. During his entire time of use, Franks was never instructed to fold back the flanges on the opposite side of each of the Earplugs.

32. Franks was first diagnosed with hearing issues in approximately 2007. Prior to joining the military, Franks had no signs or symptoms of hearing loss or tinnitus.

33. Defendant 3M 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, 3M is in the business of designing, manufacturing, and selling worker safety products, including hearing protectors and respirators. 3M has a dominant market share in virtually every safety product market, including hearing protection. 3M is one of the largest companies in the United States.

34. The Earplugs were originally created by a company called Aearo Technologies Inc. (“Aearo”). 3M acquired Aearo in 2008, including Aearo’s liabilities. Thus, 3M is liable for Aearo’s conduct, as alleged herein, and they are collectively referred to as “3M/Aearo.”

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

36. Personal jurisdiction over Defendant is proper because it conducts business in the state of Florida, has committed a tort in whole or in part in the state of Florida, has substantial and continuing contact with the state of Florida, and derives substantial revenue from goods used and consumed within the state of Florida. In fact, there are over 21 military bases in Florida, which include servicemen from all four branches of the military and the Florida National Guard and Army Reserve, all of which have used Defendant’s safety products, including the Earplugs.

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37. Plaintiffs' claims arise out of Defendant's purposeful contacts with Florida. Plaintiffs were all provided and wore the defective Earplugs.

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

III. FACTUAL ALLEGATIONS

39. In July 2018, Defendant paid millions to resolve allegations that it knowingly sold the Dual-ended Combat Arms earplugs to the U.S. military without disclosing defects that hampered the effectiveness of the hearing protection device.¹

40. Defendant's Dual-ended Combat Arms earplugs are non-linear, or selective attenuation, earplugs that were designed to provide 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 soldiers' ears when worn. If worn in the "closed" or "blocked" position, the Earplugs were intended to act as a traditional earplug and block as much sound as possible. If worn in the "open" or "unblocked" position (yellow side in user's ear), the Earplugs were intended reduce loud impulse sounds, such as battlefield explosions and artillery fire, while allowing the user to hear softer sounds like communications from fellow soldiers.

41. Defendant's uniform fitting instructions directed the wearer to grasp the Earplugs by the stem and insert them into the ear canal.

¹ See The 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* (July 26, 2018), <https://www.justice.gov/opa/pr/3m-company-agrees-pay-91-million-resolve-allegations-it-supplied-united-states-defective-dual>.

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42. But when inserted according to Defendant's uniform and standard fitting instructions, the edge of the third flange of the non-inserted end of the Earplugs presses against the wearers' ear canal and folds back to its original shape, thereby loosening the seal in their ear canals and providing inadequate protection. Because the Earplugs are symmetrical, following the standard fitting instructions will result in a loosening of the seal regardless of which side is inserted into the ear canal.

43. Further, 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, but which did not accurately represent the true effectiveness of the Earplugs.

44. This inadequate protection, instructions, and NRR created a significant and unreasonable risk of injury and hearing loss to the wearer of the Earplugs, who is unaware of the danger, has no reason to discover that danger, and, in fact, believes the Earplugs are functioning as intended, when they are not.

45. Between at least 2003 and 2015, the U.S. military purchased annually, at a minimum, one pair of 3M's Dual-ended Combat Arms earplugs for each deployed soldier that was involved in certain foreign engagements.³

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

³ See D. Scott McIlwain, et al., *Heritage of Army Audiology and the Road Ahead: The Army Hearing Program*, 98-12 AM J PUBLIC HEALTH 2167 (2008).

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A. 3M/Aearo Knew or Should Have Known that the Earplugs Were Defective and the Testing Was Inadequate

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

47. 3M/Aearo chose to conduct the testing at its own laboratory rather than at an outside, independent laboratory.

48. 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.

49. 3M/Aearo's employees intended to test: (a) the subject's hearing without Earplugs inserted; (b) the subject's hearing with the open/unblocked (yellow) end of the Dual-ended Combat Arms earplugs inserted; and (c) the subject's hearing with the closed/blocked (olive) end of the Dual-ended Combat Arms earplugs inserted.

50. This testing was designed to provide data regarding the NRR of the Dual-ended Combat Arms earplugs.

51. 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.

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

53. 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.

54. 3M/Aearo prematurely terminated the January 2000 testing of the closed end of the Dual-ended Combat Arms earplugs.

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55. 3M/Aearo personnel determined that when the closed, olive end of the Earplug was inserted into the wearer's ear according to standard fitting instructions, the basal edge of the third flange of the open, yellow end would press against the wearer's ear and fold backwards. When the inward pressure on the Earplug was released, the yellow side flanges would return to their original shape and cause the Earplug to loosen, often imperceptibly to the wearer.

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

57. 3M/Aearo personnel determined that a snug fit requires the flanges on the opposite, non-inserted end of the Earplug to be folded back prior to insertion.

58. 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 well below the intended and desired NRR.

59. 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.

60. 3M/Aearo represented the -2 NRR as a "0" NRR, which 3M/Aearo has displayed on its packaging since its launch.

61. 3M/Aearo falsely touted 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 enemies while still providing some protection. However, the "true" -2 NRR actually amplifies sound, thereby exposing the wearer to harm.

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

63. 3M, however, never properly warned servicemen 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.

B. 3M/Aearo Made Uniform Representations and Omissions Regarding the Earplugs' Safety and Efficacy

64. 3M/Aearo has been awarded multiple Indefinite-Quantity Contracts ("IQC") from the U.S. military in response to Requests for Procurement ("RFP").

65. From 2003-2012, 3M/Aearo was the exclusive supplier of this type of earplug to the U.S. military.

66. 3M/Aearo was aware of the Earplug's design defects, alleged herein, as early as 2000.

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

68. 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. Defendant did not adequately warn of the defects and did not adequately warn or instruct how to wear the Earplugs.

69. 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.

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70. 3M/Aearo knew at the time it made its certifications that the Earplugs did not comply with the MPID.

71. 3M/Aearo knew the design defects could cause the Earplugs to loosen in the wearer's ear, imperceptibly to not only the wearer but also 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.

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

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

73. Additionally, 40 C.F.R. §211.204-4(e) of the EPA regulations requires that 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.

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74. 3M/Aearo also knowingly used the deliberately flawed retest of the closed end of the Earplugs to sell the Dual-ended Combat Arms earplugs to the military with the representation that they possessed a “22” NRR in the closed position.

75. Defendant included standard instructions for the purportedly “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 did not instruct wearers to use the “modified” insertion method used in testing, which would require the wearer to fold back the flanges of the opposite end before inserting an Earplug into the ear.

77. Defendant’s uniform instructions for “proper use” of its Dual-ended Combat Arms earplugs did not warn wearers that subjects in testing did not follow these standard instructions, but rather followed the “modified” insertion method, which requires the wearer to fold back the flanges of the opposite end before inserting the Earplug into the ear.

78. Instead, Defendant improperly instructed wearers to simply insert the Earplugs into the ear canal.

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

80. 3M/Aearo’s packaging and marketing of such Earplugs with the incorrect standard insertion instructions and with a label of “22” NRR thereby misled the wearer into believing their

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hearing is safe and protected, when it is not, 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.

81. Despite knowing that its flawed testing involved steps to manipulate the fit of the Earplug, 3M/Aearo's 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 Earplug before inserting the closed end of the Earplug into their ears, which is necessary to achieve the "22" NRR and to avoid the defect associated with the short stem.

82. 3M/Aearo's instructions instead have provided standard fitting instructions for inserting the Earplug on both ends, which are facially inadequate.

83. 3M/Aearo was aware prior to selling the Earplugs to the military that its testing procedures and fitting instructions were unlawfully manipulated to obtain the NRRs it wanted on both ends of the Dual-ended Combat Arms earplug, and 3M/Aearo continued to use these inaccurate NRRs to market the Earplugs to the military for more than ten years without disclosing the design defect in the Earplugs.

84. Plaintiffs reserve the right to supplement these facts after discovery.

IV. CAUSES OF ACTION

COUNT I - DESIGN DEFECT - NEGLIGENCE

85. 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

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the safety and well-being of U.S. military service members, including Plaintiffs, who were subject to and used the Dual-ended Combat Arms earplugs during their service with the U.S. military.

86. Plaintiffs were foreseeable users of the Dual-ended Combat Arms earplugs, and Defendant knew that the Dual-ended Combat Arms earplugs would be used by U.S. military service members, including Plaintiffs.

87. The Dual-ended Combat Arms earplugs are defective in that the design of the Earplugs 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 Earplugs, while the user incorrectly believes that the Earplugs are working as intended.

88. When the Dual-ended Combat Arms earplugs are inserted into the ears according to the standard fitting instructions provided by Defendant, a proper seal is not formed with the ear canal.

89. The defect has the same effect regardless of which end is inserted because the Earplugs are symmetrical. In either scenario, the effect is that the Earplug may not maintain a tight seal in the wearers' ear canals, such that dangerous sounds can bypass the Earplug altogether, thereby posing serious risk to the wearer's hearing that are unbeknownst to him or her.

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

(a) Defendant failed to design the Dual-ended Combat Arms earplugs in a manner which would result in a NRR of "22" when used with the closed, olive end inserted, according to the standard fitting instructions provided by Defendant;

(b) Defendant failed to design the Dual-ended Combat Arms earplugs in a

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manner which would safely prevent against the injuries claimed by Plaintiffs;

(c) Defendant failed to properly and thoroughly test the Dual-ended Combat Arms earplugs;

(d) Defendant failed to properly and thoroughly analyze the data resulting from testing of the Dual-ended Combat Arms earplugs;

(e) Defendant designed, manufactured, distributed, and sold the Dual-ended Combat Arms earplugs without an adequate warning of the significant and dangerous risks of the Earplugs;

(f) Defendant designed, manufactured, distributed, and sold the Dual-ended Combat Arms earplugs without providing adequate or proper instructions to avoid the harm which could foreseeably occur because of using the Earplugs in the manner Defendant's standard fitting instructions directed;

(g) Defendant failed to fulfill the standard of care required of a reasonable and prudent manufacturer of hearing protection products, specifically including products such as the Dual-ended Combat Arms earplugs; and

(h) Defendant negligently continued to manufacture and distribute the Dual-ended Combat Arms earplugs to the U.S. military after Defendant knew or should have known of their adverse effects and/or the availability of safer designs.

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

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92. The Dual-ended Combat Arms earplugs were dangerous when used by ordinary 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.

93. The Dual-ended Combat Arms earplugs were dangerous when used by ordinary U.S. military service members who followed the instructions provided by Defendant.

94. Defendant knew or should have known of the defective design at the time the Dual-ended Combat Arms earplugs were used by Plaintiffs.

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

96. At the time the Dual-ended Combat Arms earplugs were used by Plaintiffs, the Dual-ended Combat Arms earplugs were in a condition which made them unreasonably dangerous to the ordinary U.S. military service member.

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

98. As designers, developers, manufacturers, inspectors, advertisers, distributors, and suppliers, of the Dual-ended Combat Arms earplugs, Defendant had superior knowledge of the Dual-ended Combat Arms earplugs and owed a duty of care to Plaintiffs.

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

100. The Dual-ended Combat Arms earplugs were the proximate cause of Plaintiffs' personal injuries – specifically Plaintiffs' sensorineural hearing loss and tinnitus. Defendant's

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conduct was a substantial factor in bringing about the injuries sustained by Plaintiffs because 3M designed, manufactured, tested, sold, and distributed the Dual-ended Combat Arms earplugs to the U.S. military.

101. As a direct and proximate result of Defendant's negligence in designing the defective Dual-ended Combat Arms earplugs, Plaintiffs were caused to suffer serious and dangerous side effects, including sensorineural hearing loss and tinnitus, and have further suffered the injuries and damages alleged herein.

WHEREFORE, Plaintiffs demand judgment against Defendant and request compensatory damages, punitive damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

COUNT II - DESIGN DEFECT – STRICT LIABILITY

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

103. Plaintiffs were foreseeable users of the Dual-ended Combat Arms earplugs.

104. 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 Earplugs while the user incorrectly believes that the Earplugs are working as intended.

105. 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.

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106. The Dual-ended Combat Arms earplugs were dangerous when used by an ordinary user who used them as they were intended to be used.

107. 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 Earplug altogether, thereby posing a serious risk to a U.S. military service member's hearing, unbeknownst to him or her.

108. Defendant knew of the defective design at the time the Dual-ended Combat Arms earplugs were provided to Plaintiffs.

109. 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.

110. At the time the Dual-ended Combat Arms earplugs were used by Plaintiffs, 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.

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

112. The Dual-ended Combat Arms earplugs were the proximate cause of Plaintiffs' hearing loss and tinnitus because the short-stem design of the Earplugs allowed for dangerous sounds to bypass the Earplugs altogether thereby posing a serious risk to Plaintiffs' hearing, unbeknownst to them.

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

114. As a direct and proximate result of Defendant's design defect, Plaintiffs were caused to suffer serious and dangerous side effects, including sensorineural hearing loss and tinnitus, and have further suffered the injuries and damages alleged herein.

WHEREFORE, Plaintiffs demand judgment against Defendant and request compensatory damages, punitive damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

COUNT III - FAILURE TO WARN – NEGLIGENCE

115. 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 wellbeing of U.S. military service members, including Plaintiffs, who were subject to and used the Dual-ended Combat Arms earplugs during their service with the U.S. military.

116. Plaintiffs were foreseeable users of the Dual-ended Combat Arms earplugs.

117. 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 damaging sounds to enter the ear canal by traveling around the outside of the Earplugs while the user incorrectly believes that the Earplugs are working as intended.

118. The Dual-ended Combat Arms earplugs contained no warnings or instructions, or in the alternative, inadequate warnings or instructions, as to the risk that the Dual-ended Combat

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Arms earplugs would allow for dangerous sounds to bypass the Earplugs altogether thereby posing a serious risk to Plaintiffs' hearing, unbeknownst to them.

119. 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 Earplug into the ear.

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

121. 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.

122. Had Plaintiffs 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 Earplugs before inserting the closed/blocked end of the Earplugs into the ear, Plaintiffs would have heeded the warning and/or instructions.

123. The Dual-ended Combat Arms earplugs were the proximate cause of Plaintiffs' hearing loss and tinnitus because design of the Earplugs allows for dangerous sounds to bypass the Earplugs altogether thereby posing a serious risk to Plaintiffs' hearing, unbeknownst to them.

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124. As a direct and proximate result of Defendant's failure to warn, Plaintiffs were caused to suffer serious and dangerous side effects, including sensorineural hearing loss and tinnitus, and have further suffered the injuries and damages alleged herein.

WHEREFORE, Plaintiffs demand judgment against Defendant and request compensatory damages, punitive damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

COUNT IV - FAILURE TO WARN – STRICT LIABILITY

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

126. Plaintiffs were foreseeable users of the Dual-ended Combat Arms earplugs.

127. 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 Earplugs while the user incorrectly believes that the Earplugs are working as intended.

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

129. 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.

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

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131. 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 Earplugs altogether, thereby posing a serious risk to a U.S. military service member's hearing, unbeknownst to him or her.

132. Defendant knew of the defective design at the time the Dual-ended Combat Arms earplugs were provided to Plaintiffs.

133. 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.

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

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

136. 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 Earplugs altogether, thereby posing a serious risk to Plaintiffs' hearing, unbeknownst to them.

137. 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

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requiring the wearer to fold back the flanges of the opposite end before inserting the Earplugs into the ears.

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

139. 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.

140. Had Plaintiffs 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 Earplugs before inserting the closed/blocked end of the Earplugs into the ears, Plaintiffs would have heeded the warning and/or instructions.

141. The Dual-ended Combat Arms earplugs were the proximate cause of Plaintiffs' hearing loss and tinnitus because the short-stem design of the Earplugs allowed for dangerous sounds to bypass the Earplugs altogether thereby posing a serious risk to Plaintiffs' hearing, unbeknownst to them.

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

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143. As a direct and proximate result of Defendant's design defect, Plaintiffs were caused to suffer serious and dangerous side effects, including sensorineural hearing loss and tinnitus, and have further suffered the injuries and damages alleged herein.

WHEREFORE, Plaintiffs demand judgment against Defendant and request compensatory damages, punitive damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

COUNT V - BREACH OF EXPRESS WARRANTY

144. 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 to protect the user's hearing.

145. These warranties came in one or more of the following forms: (a) publicly made written and verbal assurances of safety; (b) 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); (c) 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 (d) false and misleading written information and packaging supplied by Defendant.

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146. 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 it to be in all respects safe and proper for such purpose(s).

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

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

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

150. As a direct and proximate result of Defendant's breach of the express warranties, Plaintiffs were caused to suffer serious and dangerous side effects, including sensorineural hearing loss and tinnitus, and have further suffered the injuries and damages alleged herein.

WHEREFORE, Plaintiffs demand judgment against Defendant and request compensatory damages, punitive damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

COUNT VI - BREACH OF IMPLIED WARRANTIES

151. At all material times, Defendant was a merchant with respect to the Dual-ended Combat Arms earplugs.

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152. As service members, Plaintiffs were foreseeable users of the Dual-ended Combat Arms earplugs.

153. At the time Defendant marketed, sold, and distributed the Dual-ended Combat Arms earplugs, Defendant knew of the use for which the Dual-ended Combat Arms earplugs were intended, impliedly warranted the Dual-ended Combat Arms earplugs to be fit for a particular purpose, and warranted that the Dual-ended Combat Arms earplugs were of merchantable quality and effective for such use.

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

155. Plaintiffs reasonably relied upon the skill and judgment of Defendant as to whether the Dual-ended Combat Arms earplugs were of merchantable quality, safe, and effective for its intended use.

156. Contrary to such implied warranties, the Dual-ended Combat Arms earplugs were neither of merchantable quality, nor safe or effective for its 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.

157. The Dual-ended Combat Arms earplugs were defectively designed and manufactured, and were distributed and sold without the provision of reasonable instructions or warnings regarding the foreseeable risk of harm posed by the Dual-ended Combat Arms earplugs to service members, including Plaintiffs.

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158. As a direct and proximate result of Defendant's breach of implied warranties, Plaintiffs were caused to suffer serious and dangerous side effects, including sensorineural hearing loss and tinnitus, and have further suffered the injuries and damages alleged herein.

WHEREFORE, Plaintiffs demand judgment against Defendant and request compensatory damages, punitive damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

COUNT VII - FRAUDULENT MISREPRESENTATION

159. Defendant falsely and fraudulently represented to Plaintiffs, and/or the public in general, that the Dual-ended Combat Arms earplugs had been properly tested and were free from all defects.

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

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

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

163. Defendant made these representations with the intent of defrauding and deceiving Plaintiffs and the public in general, and with the intent of inducing Plaintiffs and the public in general, to recommend, purchase, and/or use the Dual-ended Combat Arms earplugs, all of which evince a callous, reckless, willful, depraved indifference to the health, safety, and welfare of Plaintiffs.

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164. At the time the aforesaid representations were made by Defendant, and at the time Plaintiffs used the Dual-ended Combat Arms earplugs, Plaintiffs were unaware of the falsity of said representations and reasonably believed them to be true.

165. In reliance upon said representations, Plaintiffs were induced to and did use the Dual-ended Combat Arms earplugs, thereby sustaining severe and permanent personal injuries.

166. 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 warnings and instructions.

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

168. Defendant brought the Dual-ended Combat Arms earplugs to the market and acted fraudulently, wantonly, and maliciously to the detriment of Plaintiffs.

169. As a result of the foregoing acts and omissions, Plaintiffs were caused to suffer serious and dangerous side effects, including sensorineural hearing loss and tinnitus, and have further suffered the injuries and damages alleged herein.

WHEREFORE, Plaintiffs demand judgment against Defendant and request compensatory damages, punitive damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

COUNT VIII - FRAUDULENT CONCEALMENT

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

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

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

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

173. Defendant was under a duty to disclose to Plaintiffs the defective nature of the Dual-ended Combat Arms earplugs.

174. 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 Plaintiffs, in particular.

175. Defendant's concealment and omissions of material facts concerning, *inter alia*, the safety and efficacy of the Dual-ended Combat Arms earplugs was made purposefully, willfully,

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wantonly, and/or recklessly, to mislead Plaintiffs into reliance, continued use of the Dual-ended Combat Arms earplugs, and actions thereon, and to cause them to purchase and/or use the product. Defendant knew that Plaintiffs had no way to determine the truth behind Defendant's concealment and omissions, and that these included material omissions of facts surrounding the Dual-ended Combat Arms earplugs, as set forth herein.

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

177. By reason of the foregoing, Plaintiffs were caused to suffer serious and dangerous side effects, including sensorineural hearing loss and tinnitus, and have further suffered the injuries and damages alleged herein.

WHEREFORE, Plaintiffs demand judgment against Defendant and request compensatory damages, punitive damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

COUNT IX - NEGLIGENT MISREPRESENTATION

178. Defendant had a duty to represent to Plaintiffs and the public in general that the Dual-ended Combat Arms earplugs had not been properly tested and were not found to be effective.

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

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

181. 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

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control, and/or distribution into interstate commerce, in that Defendant negligently misrepresented the Dual-ended Combat Arms earplugs' safety and efficacy.

182. Defendant breached its duty in misrepresenting the Dual-ended Combat Arms earplugs' serious defects to Plaintiff.

183. As a result of the foregoing acts and omissions, Plaintiffs were caused to suffer serious and dangerous side effects including sensorineural hearing loss and tinnitus, and have further suffered the injuries and damages alleged herein.

WHEREFORE, Plaintiffs demand judgment against Defendant and request compensatory damages, punitive damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

COUNT X - FRAUD AND DECEIT

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

185. 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.

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

187. Defendant had a duty when disseminating information to the public to disseminate truthful information and a parallel duty not to deceive the public and Plaintiffs.

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188. The information distributed to Plaintiffs by Defendant contained material representations of fact and/or omissions concerning the hearing protection provided by the Dual-ended Combat Arms earplugs.

189. These representations were all false and misleading.

190. 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.

191. It was the purpose of Defendant in making these representations to deceive and defraud the public and/or Plaintiffs, to gain the confidence of the public and/or Plaintiffs, to falsely ensure the quality and fitness for use of the Dual-ended Combat Arms earplugs, and induce the public and/or Plaintiffs to purchase, request, dispense, recommend, and/or continue to use the Dual-ended Combat Arms earplugs.

192. Defendant made the aforementioned false claims and false representations with the intent of convincing the public and/or Plaintiffs that the Dual-ended Combat Arms earplugs were fit and safe for use.

193. These representations and others made by Defendant were false when made, and/or were made with a pretense of actual knowledge when knowledge did not actually exist, and/or were made recklessly and without regard to the actual facts.

194. These representations and others made by Defendant were made with the intention of deceiving and defrauding Plaintiffs, were made to induce Plaintiffs to rely upon misrepresentations, and caused Plaintiffs to purchase, use, rely on, request, dispense, and/or recommend the Dual-ended Combat Arms earplugs.

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

196. Defendant willfully and intentionally failed to disclose the 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.

197. 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 and lulling Plaintiffs into a sense of security so that Plaintiffs would rely on the representations made by Defendant and purchase, use, and rely on the Dual-ended Combat Arms earplugs.

198. Plaintiffs 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.

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

200. Plaintiffs did not discover the true facts with respect to the dangerous and serious health and/or safety concerns of the Earplugs and Defendant's false representations, nor could Plaintiffs with reasonable diligence have discovered the true facts.

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201. Had Plaintiffs known the true facts with respect to the dangerous and serious health and/or safety concerns of the Dual-ended Combat Arms earplugs, Plaintiffs would not have used and/or relied on the Dual-ended Combat Arms earplugs.

202. Defendant's aforementioned conduct constitutes fraud and deceit and was committed and/or perpetrated willfully, wantonly, and/or purposefully on Plaintiffs.

203. As a result of the foregoing acts and omissions, Plaintiffs were caused to suffer serious and dangerous side effects including sensorineural hearing loss and tinnitus, and have further suffered the injuries and damages alleged herein.

WHEREFORE, Plaintiffs demand judgment against Defendant and request compensatory damages, punitive damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

COUNT XI - GROSS NEGLIGENCE

204. 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 Plaintiffs, for which the law would allow the imposition of punitive damages (and which Plaintiffs seek, as set forth below).

205. 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 Plaintiffs (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). Defendant was actually and subjectively aware of the risks involved, but nevertheless proceeded with conscious indifference

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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 Plaintiffs.

206. Plaintiffs relied on the representations and suffered injuries as a proximate result of this reliance.

207. Plaintiffs seek to assert claims for punitive damages in an amount within the jurisdictional limits of the Court, as set forth below.

208. Plaintiffs also allege that the acts and omissions of Defendant, whether taken singularly or in combination with others, constitute gross negligence that proximately caused the injuries to Plaintiffs. In that regard, Plaintiffs seek 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.

WHEREFORE, Plaintiffs demand judgment against Defendant and request compensatory damages, punitive damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

V. PUNITIVE DAMAGES

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

(a) by failing to disclose, concealing, and suppressing material facts regarding the dangerous and serious health and/or safety concerns of the Dual-ended Combat Arms earplugs;

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(b) by failing to disclose the truth and making false representations with the purpose and design of deceiving and lulling Plaintiffs, and others, so that they would use and rely upon the Dual-ended Combat Arms earplugs; and

(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 Plaintiffs in particular.

WHEREFORE, Plaintiffs demand judgment against Defendant and request compensatory damages, punitive damages, together with interest, costs of suit, attorneys' fees, and such further relief as the Court deems equitable and just.

VI. TIMELINESS AND TOLLING OF STATUTES OF LIMITATIONS

210. Plaintiffs filed this lawsuit within the applicable limitations period of first suspecting that the Dual-ended Combat Arms earplugs caused their injuries. Plaintiffs could not, by the exercise of reasonable diligence, have discovered the wrongful cause of the Dual-ended Combat Arms earplugs-induced injuries at an earlier time because, at the time of these injuries, the cause was unknown to Plaintiffs.

211. Plaintiffs did not suspect, nor did Plaintiffs have reason to suspect, the cause of these injuries, or the tortious nature of the conduct causing these injuries, until less than the applicable limitations period prior to the filing of this action.

212. Furthermore, the running of any statute of limitations has been tolled by reason of Defendant fraudulent concealment. Through their affirmative misrepresentations and omissions, Defendant actively concealed from Plaintiffs the risks associated with the defects in the Dual-ended Combat Arms earplugs.

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213. As a result of Defendant's actions, Plaintiffs were unaware and could not reasonably know, or have learned through reasonable diligence, that Plaintiffs have 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.

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

215. Additionally, pursuant to the Service Members Civil Relief Act, the period of Plaintiffs' military service may not be included in computing any statute of limitations applicable herein. *See* 50 U.S.C. §3936.

VII. JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all claims in this action.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray 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 Plaintiffs 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);

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- 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. awarding Plaintiffs their costs and expenses in this litigation, including, but not limited to, expert fees and reasonable attorneys' fees;
- L. punitive or exemplary damages in such amounts as may be proven at trial; and
- M. awarding Plaintiffs such other and further relief as may be just and proper.

DATED: July 22, 2019

ROBBINS GELLER RUDMAN
& DOWD LLP
MARK J. DEARMAN (FBN 982407)
RICARDO J. MARENCO (FBN 113008)

s/Mark J. Dearman

Mark J. Dearman

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Case No. _____

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Attorneys for Plaintiffs

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 Christopher Hambaugh, Matthew Kuhn, & Ryan Franks, Individually and on Behalf of All Others Similarly Situated,

DEFENDANTS 3M Company

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

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Robbins Geller Rudman & Dowd LLP, 120 East Palmetto Park Road, Suite 500, Boca Raton, FL 33432, Tel.: 561/750-3000

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)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

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

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and checkboxes.

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: Defendant knowingly designed and sold defective earplugs which were issued to US military service members.

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER MDL-No. 2885 (N.D. Fla.)

DATE 07/22/2019 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.
 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.

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

UNITED STATES DISTRICT COURT

for the

Middle District of Florida [dropdown icon]

CHRISTOPHER HAMBAUGH, MATTHEW KUHN, & RYAN FRANKS, Individually and on Behalf of All Others Similarly Situated,

Plaintiff(s)

v.

Civil Action No.

3M COMPANY,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

3M CORPORATION
CORPORATION SERVICE COMPANY
1201 HAYS STREET
TALLAHASSEE, FL 32301-2525

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:

ROBBINS GELLER RUDMAN
& DOWD LLP
MARK J. DEARMAN (FBN 982407)
RICARDO J. MARENCO (FBN 113008)
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432

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: _____

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:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [3M Sued in Florida Over Allegedly Defective Dual-Ended Combat Arms Earplugs](#)
