

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

IN RE: 3M COMBAT ARMS
EARPLUG PRODUCTS
LIABILITY LITIGATION

Case No. 3:19md2885

This Document Relates to All Cases

Judge M. Casey Rodgers
Magistrate Judge Gary R. Jones

**PRETRIAL ORDER NO. 18
ORDER GOVERNING
INITIAL CENSUS REQUIREMENTS FOR FILED CASES**

Plaintiffs and Defendants 3M Company, Aearo Technologies LLC, Aearo Holding LLC, Aearo Intermediate LLC, and Aearo LLC (collectively “Defendants”) agree that initial discovery (census) information will be necessary for all filed cases. The parties have therefore asked the Court to enter this Order governing the process for obtaining and producing such information. The parties have agreed to use the online MDL Centrality System, as designed and provided by BrownGreer PLC, to complete and serve the discovery material subject to this Order. Accordingly, the Court hereby orders as follows.

Initial Census Questions

The term “Initial Census Questions” will refer to the questions in the questionnaire attached hereto as **Exhibit A**. For all cases filed in or transferred into MDL 2885 on or before the date of this Order, the “Census Question Deadline” is December 23, 2019. For all cases filed in or transferred into MDL 2885 after the

date of this Order, the “Census Question Deadline” is ninety (90) days from the date the case was filed in or transferred into MDL 2885.

Each Plaintiff must complete and serve on Defendants through MDL Centrality answers to the Initial Census Questions by the Census Question Deadline.¹ Plaintiff’s answers to the Initial Census Questions will be made under penalty of perjury, will be treated as interrogatories pursuant to Federal Rule of Civil Procedure 33, and will be subject to Federal Rules of Civil Procedure 26 and 37. The Census Question Deadline may only be extended by: (i) the Court on a showing of good cause; or (ii) agreement of the parties with leave of Court.

Defendants must notify each Plaintiff of any allegedly deficient answers to the Initial Census Questions within 30 days of being served with the answers through MDL Centrality. Defendants’ notification must specify which answers are allegedly deficient, along with the basis for their position. Within 30 days of receiving Defendants’ notification, a Plaintiff must respond to the notification by either serving non-deficient answers or otherwise explaining in writing why he or she disagrees with the deficiencies identified by Defendants. The parties will have 14 days from the date that a Plaintiff’s response to Defendants’ notification is served to

¹ An Initial Census Questions form is complete where accurate and responsive answers are provided to every question on the form. Whether an answer is deficient will be determined under Federal Rule of Civil Procedure 33. Importantly, the deficiency process is not an opportunity to test the veracity of a plaintiff’s answers; it is intended to address omissions and incomplete answers only.

meet and confer regarding any allegedly uncured deficiencies. To the extent disputes remain, Defendants must file a motion to compel within 14 days after the meet and confer.² Defendants' motion must identify the Plaintiffs who provided allegedly deficient answers, as well as the nature of any alleged deficiency. The Plaintiffs' response to any such motion to compel must be filed within 14 days after the motion is filed. Thereafter, the Court will resolve the outstanding dispute(s). To the extent the Court finds a Plaintiff's answers deficient, that Plaintiff will be granted a short time period within which to cure the deficiency. Absent a showing of good cause, failure to provide nondeficient answers to the Initial Census Questions within the applicable deadlines will be grounds for dismissal with prejudice.

Initial Census Documents

The term "Initial Census Documents" will refer to the documents responsive to the document requests attached hereto as Exhibit B. For all cases filed in or transferred into MDL 2885 on or before the date of this Order, the "First Document Deadline" is November 6, 2019. For all cases filed in or transferred into MDL 2885 after the date of this Order, the "First Document Deadline" will be forty-five (45) days from the date the case was filed in or transferred into MDL 2885. For all cases

² If Defendants allege that multiple plaintiffs' answers are deficient for similar reasons, they may file an omnibus motion on the MDL docket rather than separate motions on the individual dockets for each plaintiff. Plaintiff Leadership, rather than individual non-leadership counsel, must respond to any such omnibus motion filed on the MDL docket.

filed in or transferred into MDL 2885 on or before the date of this Order, the “Final Document Deadline” is January 13, 2020. For all cases filed in or transferred into MDL 2885 after the date of this Order, the “Final Document Deadline” will be one hundred and twenty (120) days from the date the case was filed in or transferred into MDL 2885.

Each Plaintiff must provide Defendants through MDL Centrality with the Initial Census Documents for each Plaintiff that are in his or her possession, custody or control by the First Document Deadline. If Plaintiff or Plaintiff’s counsel thereafter gains possession, custody or control of additional Initial Census Documents, Plaintiffs’ counsel must provide those documents to Defendants through MDL Centrality within 14 days of receipt. To the extent any Initial Census Documents are in the possession of a third party, including the military or other government agency, Plaintiff must request those documents from the third party within the following time periods:

- ***Touhy* requests.** Plaintiffs in cases filed in or transferred into MDL 2885 on or before the date of this order must serve any *Touhy* requests within twenty-one (21) days of the date of this order. Plaintiffs in cases filed in or transferred into MDL 2885 after the date of this order must serve any *Touhy* requests within twenty-one (21) days of the date the case was filed in or transferred into MDL 2885.
- **All other requests.** Plaintiffs in cases filed in or transferred into MDL 2885 on or before the date of this order must serve all other requests within forty-five (45) days of the date of this order. Plaintiffs in cases filed in or transferred into MDL 2885 after the date of this order must serve all other requests within forty-five (45) days of the date the case was filed in or transferred into MDL 2885.

Each Plaintiff must complete his or her production of the Initial Census Documents to Defendants through MDL Centrality by the Final Document Deadline. The Final Document Deadline may only be extended by: (i) the Court on a showing of good cause; or (ii) agreement of the parties with leave of Court.

Defendants must notify each Plaintiff of any alleged deficient production of Initial Census Documents within 60 days of being served with the documents through MDL Centrality. Defendants' notification must specify which documents are absent or deficient, along with the basis for their position that a document is deficient. Within 60 days of receiving Defendants' notification, a Plaintiff must respond to the notification by either curing the deficiency or otherwise explaining in writing why he or she disagrees with the deficiencies identified by Defendants. The parties will have 14 days from the date that a Plaintiff's response to Defendants' notification is provided to meet and confer regarding any allegedly uncured deficiencies. To the extent disputes remain, Defendants must file a motion to compel within 14 days after the meet and confer.³ Defendants' motion must identify the Plaintiffs whose production of Initial Census Documents are allegedly deficient, as well as the nature of any alleged deficiency. The Plaintiffs' response to any such

³ If Defendants allege that multiple plaintiffs' Initial Census Documents are deficient for similar reasons, they may file an omnibus motion on the MDL docket rather than separate motions on the individual dockets for each plaintiff. Plaintiff Leadership, rather than individual non-leadership counsel, must respond to any such omnibus motion filed on the MDL docket.

motion to compel must be filed within 14 days after the motion is filed. Thereafter, the Court will resolve the outstanding dispute(s). To the extent the Court finds a Plaintiff's Initial Census Documents are deficient, that Plaintiff will be granted a short time period within which to cure the deficiency. Absent a showing of good cause, failure to provide nondeficient Initial Census Documents within the applicable deadlines will be grounds for dismissal with prejudice.

DONE AND ORDERED, on this 22nd day of October, 2019.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE

EXHIBIT A
Filed Case Census Form
Initial Census Questions

1. Information

- a. Claimant Name: _____
- b. Law Firm: _____
- c. Original Case No (if applicable): _____ cv Not applicable:
- d. Original Case Filing Date: _____
- e. MDL Case No: _____
- f. MDL Case Filing Date: _____
- g. Male Female
- h. Date of Birth: _____
- i. Current state of residence: _____
- j. Number of years in current state of residence: _____

2. Did the claimant serve in the military and/or armed forces?

Yes No

If yes:

- a. Identify each branch the claimant served in, and the dates of service in each branch:

Branch	Start Date	End Date
		Present
		Present
		Present
		Present
		Present

- b. Identify each of the claimant's duty stations between 2000 and present:

Duty Station	Military Occupational Specialty	Used Combat Arms Earplugs?	Duty Station Start Date	Duty Station End Date
				Present
				Present

[illegible]

c. Identify each of the claimant's military occupational specialties between 2000 and present:

Military Occupation Specialty	Start Date	End Date
		Present
		Present
		Present

[illegible]

3. Is the claimant currently on active military duty?
- Yes No
4. Did the claimant use the Combat Arms Earplugs version 2 (“CAEv2”) when he or she served in the military and/or armed forces?
- Yes No

If yes,

- a. State whether the claimant used CAEv2 in training, combat, or both:

Training	Combat	Both	Don't Remember
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5. Did the claimant use CAEv2 earplugs, the Indoor-Outdoor Range earplugs, or the EAR Arc earplugs as a civilian at any time?

Yes

No

- a. If yes, select all that apply:

CAEv2

Indoor-Outdoor Range earplugs

EAR Arc earplugs

- b. Specify reason for use:

Reason for Use	Use
Military Contractor	
First Responder	
Shooting Range	
Hunting	
Welding	
Construction	
Other:	

6. Identify the physical injuries claimant sustained as a result of using CAEv2 earplugs:

Total Hearing Loss, Left Ear

Total Hearing Loss, Right Ear

Percentage/grade of hearing loss, if known:

Partial Hearing Loss, Left Ear

Partial Hearing Loss, Right Ear

Percentage/grade of hearing loss, if known:

Tinnitus, Left Ear

Tinnitus, Right Ear

Tinnitus - Extent Unknown

Other—Specify: _____

7. Identify the approximate year on which the claimant first noticed:
- a. that the CAEv2 was not providing adequate protection from loud noises;
- Date: _____
- b. the injury described in response to Question No. 6 above.

Injury described in response to Question No. 6	Approx. year first noticed injury

: 0"*****J cu'j g'j gctkpi 'nqu'kf gpvklgf 'k'tgur qpug'v'q'S wguvqp'P q08"cdqyg'dggp'kf gpvklgf
during an audiogram or other hearing test?"

Yes No

If yes, what was the approximate date of the first audiograms or other hearing tests that identified the injuries described in response to Question No. 6 above?

Injury identified	Approx. Date of the first hearing tests

Injury identified	Approx. Date of the first hearing tests

9. Has the claimant received disability benefits as a result of hearing loss, tinnitus or other hearing injury?

Yes No

If yes, identify the agency or entity that provided the claimant with disability benefits:

Declaration

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that all the information provided in response to these Initial Census Questions is true and correct to the best of my knowledge, information and belief formed after a reasonable inquiry. I understand that I am under an obligation to supplement these responses.

Date: _____

Signature: _____

Name: _____

EXHIBIT B

Initial Census Document Requests

1. Form DD214 and the ORB, ERB and/or NORB relating to the Plaintiff's service in the military.
2. DD2215 and DD2216 audiological exams relating to the Plaintiff's service in the military.
3. Any audiograms or other hearing tests performed on Plaintiff outside of the military.
4. Records relating to any disability benefits Plaintiff applied for and/or received as a result of hearing loss, tinnitus or other hearing injury. Such records would include, where available:
 - a. VBA Worksheet 1305 (Audio)
 - b. VA Form 21-4138 – Statement in Support of Claim
 - c. VA 21-8940 (Application for Increased Compensation Based on Unemployability)
 - d. 21-4192 (Request for Employment Information in Connection with Claim for DB)
 - e. VA Form 21-265 EZ – Application for disability benefits
 - f. VA form 10-2364 and 10-2364a – VA audiological examinations (audiograms)
 - g. Rating Decision