

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

IN RE: 3M COMBAT ARMS  
EARPLUG PRODUCTS  
LIABILITY LITIGATION

This Document Relates to All Cases

Case No. 3:19-md-02885

Judge M. Casey Rodgers  
Magistrate Judge Gary R. Jones

**PRETRIAL ORDER NO. 56  
Medical Examinations of Plaintiffs in Group A Cases**

Pursuant to an agreement between Plaintiffs and Defendants 3M Company, Aearo Technologies LLC, Aearo Holdings, LLC, Aearo Intermediate, LLC, and Aearo, LLC, and any of their related or affiliated entities or individuals named as defendants herein (collectively, “Defendants”), which was negotiated and discussed extensively between the parties for more than one month with the assistance of Judge Herndon, the Court enters this order setting certain requirements for medical examinations conducted of Group A Plaintiffs at the request of Defendants.

**I. Time and Place of Examinations of Group A Plaintiffs**

<b>Group A Plaintiff</b>	<b>Location</b>	<b>Date and Time</b>
Baker	Los Angeles, CA	10/20/2020 (8 a.m. P.T.)
Hacker	Los Angeles, CA	10/21/2020 (12:00 p.m. P.T.)
Estes	Los Angeles, CA	10/23/2020 (9 a.m. P.T.)
Keefer	Pensacola, FL	10/26/2020 (9:30 a.m. C.T.)
McCombs	Parties to Confer	Parties to Confer

The total examination time for each Group A Plaintiff must proceed efficiently and not exceed four hours. Objective test results from the tests conducted during the examination must be produced to Plaintiffs' counsel no later than seven days following the examination.

**II. Scope of Examinations of Group A Plaintiffs**

The examinations of Group A Plaintiffs will consist of all or a subset of the tests on Exhibit A hereto. Twenty-four hours before each Group A Plaintiff examination, Defendants must provide a written list to Plaintiffs' counsel by e-mail of the tests on Exhibit A hereto that Defendants intend to conduct in the examination for such Plaintiff. That list cannot be expanded during the examination.

**III. Manner/Conditions for Examinations of Group A Plaintiffs**

- a. Rebuttal Testing: The Group A Plaintiffs may arrange to have themselves be subjected as rebuttal to the same tests that are conducted during any examination at the request of Defendants; except, however, to the extent that (i) such tests were already performed before Defendants' requested examination; or (ii) the Group A Plaintiffs were aware of the tests that may be performed at any examination at the request of Defendants such that the tests could reasonably have been conducted before the October 9, 2020 deadline for Plaintiffs' expert reports. To the extent any

rebuttal testing is conducted, the Group A Plaintiffs must provide the same discovery and disclosures that are required for examinations conducted at Defendants' request.

- b. Paralegal Attendance: The Group A Plaintiffs are entitled to have present during any examination conducted at Defendants' request a non-lawyer representative of Plaintiffs' counsel (such as a paralegal or a law firm staff person). Other than as described in paragraph III(c) below, such person must not interfere in any way during the examination.
- c. Histories/Forms: No medical histories may be taken during the course of any examination conducted at the request of Defendants. Nor may any Group A Plaintiff be required to fill out forms relating to a medical or other history during any such examination. Defendants will not use a medical examination as a means of obtaining narrative discovery relating to a Group A Plaintiffs' medical history or prior noise exposures. Nothing in this paragraph may limit any questions asked of a Group A Plaintiff to the extent such questions are attendant to and a routine part of a test being performed in the course of the examination or are medically necessary to administer such test.

To the extent the non-lawyer representative referenced in paragraph III(b) above believes the requirements of this paragraph are not being followed, he or she must advise by text message or e-mail to counsel for record for both Plaintiffs and Defendants of that fact and the parties will confer telephonically as soon as possible to resolve the issue.

**SO ORDERED**, this 20th day of October, 2020.

*M. Casey Rodgers*

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**M. CASEY RODGERS**  
**UNITED STATES DISTRICT JUDGE**

**EXHIBIT A**

1. Auditory Brain Stem Response Testing
2. Acoustic Reflex Decay
3. Acoustic Reflex Threshold
4. Bone Conduction Threshold
5. Otoacoustic Emissions
6. Pure Tone Air Threshold
7. Speech in Noise Threshold
8. Speech Reception Threshold
9. Tinnitus Masking Threshold
10. Tinnitus Matching Test
11. Tone in Noise Threshold
12. Tympanometry
13. Video Otoscopy
14. Wide-band Immittance
15. Word Recognition Testing