

**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:
Cases on Exhibit A

Judge M. Casey Rodgers
Magistrate Judge Hope T. Cannon

ORDER

On August 29, 2023, the Court entered Case Management Order (“CMO”) 57, ECF No. 3811, which imposes requirements for those Claimants electing to litigate rather than participate in Master Settlement Agreement I (hereinafter referred to as “Litigating Plaintiffs”).

The Claimants identified on Exhibit A elected on January 25, 2024, to opt out of the Settlement and continue litigating their claims. Accordingly, the provisions of Case Management Order No. 80 (Amendment to CMO 57 for Opt-Out Litigating Plaintiffs), which extended deadlines in CMO 57 for certain claimants, do not apply to the Claimants on Exhibit A. Instead, these Claimants became subject to the deadlines set forth in CMO 57 generally from the date of their election not to settle.¹

¹ CMO 57 generally requires, among other things: (1) preservation notices and production of documents/information within 30 days of the election to litigate; (2) service of a Rule 26(a)(2) expert report addressing specified issues and accompanied by medical records within 60 days of the election; (3) an in-person status conference before the Court in Pensacola, Florida within 60

The purpose of this Order is to 1) assist Claimants on Exhibit A in calculating their CMO 57 deadlines, and 2) modify Claimants' obligation to provide an affidavit concerning the statute of limitations under CMO 57 with regard to time for compliance and method of service.²

Accordingly, consistent with the Court's prior order, it is **ORDERED** that:

1. Based on their January 25 election date, the Claimants on Exhibit A are subject to the following 30 and 60 day deadlines for certain CMO 57 requirements:

Date of Election	30 days	60 days
1/25/2024	2/26/2024	3/25/2024

30 Day Deadlines

- Production Requirements (Sections V.A.a–c & VII.A of CMO 57)
- Preservation Notice Requirements (Sections IV & VII.A of CMO 57)³

days of the election; and (4) mediation within 90 days of fulfilling the production and expert requirements. *See* ECF No. 3811.

² To the extent this Order provides a time to comply or method of service different from CMO 57, this Order controls.

³ There is an inconsistency in CMO 57 in the deadlines for those cases that need to transition from the administrative docket for the preservation notice requirements. In Paragraph 14 of CMO 57, a Litigating Plaintiff has 30 days to comply with these preservation notice requirements after he/she "transitions his/her case to the Active Docket." But in Paragraph 29, "items required by Sections IV – V," which include the preservation notice requirements in Section IV, "shall be produced no later than thirty (30) days after the date such Litigating Plaintiff indicates on the Registration Form that the Litigating Plaintiff does not intend to settle his/her claims." As a result, for any Litigating Plaintiff who timely transitions his/her case after his/her election date, he/she may have up to 30 days after the *transition* date to comply with the preservation notice requirements; those individualized deadlines will not be enumerated by this Order.

60 Day Deadlines

- Expert Reports (Sections V.A.d & VII.A of CMO 57)
 - Latest Date of Status Conference (Section VII.C of CMO 57)
 - Prior to the status conference, counsel must also serve an Attestation of Counsel on Defendants under CMO 57 Section VII.C
2. There is also a requirement that all Litigating Plaintiffs provide a Statute of Limitations Affidavit (Sections VIII.B.a of CMO 57). Every Litigating Plaintiff on Exhibit A must, within **thirty (30) days of the date of this Order**, serve on Defense Counsel an affidavit signed by the Plaintiff providing the following information: (1) the date the Plaintiff first learned his/her alleged hearing loss or tinnitus may be related to the use of the CAEv2; (2) how the Plaintiff first learned his/her alleged hearing loss or tinnitus may be related to the use of the CAEv2; (3) the date the Plaintiff first spoke to or corresponded with an attorney about potential litigation related to the use of the CAEv2; (4) the date the Plaintiff first retained Counsel for litigation related to use of the CAEv2; (5) the date the Plaintiff first used the CAEv2; and (6) if applicable, the date the Plaintiff first saw any documents, advertisements or packaging created by Defendants relating to the CAEv2, including a description of the documents, advertisements or packaging. Service by Plaintiffs must be made on Counsel for Defendants via MDL Centrality and via counsel:

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3. Other deadlines in CMO 57 that are not keyed off of the election date are not impacted by this Order and remain in effect—*e.g.*, CMO 57 states, “[m]ediation must commence within ninety (90) days of the date that the Plaintiff’s production and expert requirements have been fulfilled and must continue for at least 90 days following the date on which it commences.”
4. A Litigating Plaintiff’s failure to comply with this Order will result in dismissal of his/her case with prejudice. *See In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 460 F.3d 1217 (9th Cir. 2006) (affirming dismissals of individual cases with prejudice for failure to comply with case management orders by failing to timely file Plaintiff Fact Sheets and/or records authorizations, despite repeated instructions to do so).⁴

⁴ Plaintiffs were previously notified of these requirements through CMO 57, which has now been in place for over five months.

5. The Clerk is directed to enter a copy of this Order on the MDL docket and on the individual docket for each of the cases identified on Exhibit A.

SO ORDERED, on this 20th day of February, 2024.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE