



1 Arctia. Plaintiff alleges in his complaint that he seriously injured his back and neck  
2 while lifting a heavy cable. He seeks damages for lost earnings, lost earning capacity,  
3 past and future medical expenses, and “physical and emotional pain and suffering and  
4 loss of enjoyment of life.”<sup>1</sup> Arctia sought to schedule Plaintiff for a psychiatric  
5 evaluation given his claims of emotional distress and evidence of Plaintiff’s post-  
6 accident psychological and psychiatric treatment. Plaintiff objected to the evaluation.  
7 He does not agree that an IME is warranted because he argues that he is only claiming  
8 “garden variety” emotional distress damages.  
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### 11 **III. STANDARD OF REVIEW**

12 Rule 35 governs the court’s determination of a motion for an IME. That rules  
13 states as follows:

14 The court where the action is pending may order a party whose mental or  
15 physical condition . . . is in controversy to submit to a physical or mental  
16 examination by a suitably licensed or certified examiner. . . . The order . . .  
17 may be made only on motion for good cause . . . .<sup>2</sup>

18 Under the rule then, Plaintiff’s mental health examination is only warranted here if his  
19 mental condition is “in controversy” and if Arctia has shown “good cause” for requesting  
20 the examination.<sup>3</sup> These requirements “are not met by mere conclusory allegations of  
21 the pleadings—nor by mere relevance to the case—but require an affirmative showing  
22 by the movant that each condition as to which the examination is sought is really and  
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26 <sup>1</sup>Doc. 4 at ¶¶ 23, 24, 25.

27 <sup>2</sup>Fed. R. Civ. P. 35.

28 <sup>3</sup>*Schlagenhauf v. Holder*, 379 U.S. 104, 117 (1964).

1 genuinely in controversy and that good cause exists for ordering each particular  
2 examination.”<sup>4</sup>

3           When determining whether a plaintiff’s mental health is “in controversy,” district  
4 courts in this circuit apply the multi-factor test set forth in *Turner v. Imperial Stores*.<sup>5</sup>  
5 Under the *Turner* test, the mental examination of a plaintiff is proper where that plaintiff  
6 alleges emotional distress *and* the case involves one or more of the following factors:  
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- 8           1) a cause of action for intentional or negligent infliction of emotional  
9           distress;
- 10           2) an allegation of a specific mental or psychiatric injury or disorder;
- 11           3) a claim of unusually severe emotional distress;
- 12           4) plaintiff’s offer of expert testimony to support a claim of emotional distress;
- 13           and/or
- 14           5) plaintiff’s concession that his or her mental condition is “in controversy”  
15           within the meaning of Rule 35.<sup>6</sup>

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19 A claim of emotional distress, without the presence of one or more of these additional  
20 factors, is insufficient to put a plaintiff’s mental health in controversy.<sup>7</sup>

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23           <sup>4</sup>*Id.* at 118.

24           <sup>5</sup>291 F.R.D. 90 (S.D. Cal. 1995); *see also Hernandez v. Simpson*, No. ED-CV-13-2296,  
25 2014 WL 4090513, at \*2 (C.D. Cal. Aug. 18, 2104) (listing a few district courts that have applied  
26 the test); *Ruvane v. Elizabeth F, Inc.*, No. 3:15-cv-00079, 2016 WL 6514181, at \*4 (D. Alaska  
Aug. 25, 2016) (applying the *Turner* factors).

27           <sup>6</sup>*Turner*, 161 F.R.D. 89, 98 (S.D. Cal. 1995).

28           <sup>7</sup>*Id.* at 97.



1 that these thoughts of “wanting to die . . . are brought on by his hopeless feelings  
2 related to dealing with chronic pain.”<sup>11</sup> He obtained a psychiatric diagnosis “indicated by  
3 a DSM IV diagnosis on Axis 1.”<sup>12</sup> Dr. Roman concludes that Plaintiff’s major depression  
4 “is a factor of his work injury not diagnosed prior to the lifting injury in any preaccident  
5 records.”<sup>13</sup> Plaintiff testified that the accident and losing his job affected him to the point  
6 of hospitalization for his behavior.<sup>14</sup>  
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8         The same evidence discussed in the preceding paragraph also demonstrates  
9 satisfaction of the third factor of the *Turner* test: a claim of unusually severe emotional  
10 distress. Plaintiff argues that his claim for emotional distress damage is like any other  
11 case where the plaintiff has distress normally associated with or a result of recovery  
12 from a physical injury. While mental anguish, fear, anxiety, anger, and depression as a  
13 result of suffering and recovering from a physical injury are not considered unusually  
14 severe, Plaintiff’s situation involves something more than “garden-variety” emotional  
15 distress. He is claiming an actual depressive condition, Major Depressive Disorder,  
16 which resulted in numerous hospitalizations and attempted suicide and which is an  
17 ongoing issue based on this request for future mental health treatment. The situation  
18 here is similar to that in *Gurshin v. Bank of America, National Assoc.*,<sup>15</sup> where the  
19 district court granted the defendant’s request for an IME where the plaintiff had been  
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24 <sup>11</sup>Doc. 106-4 at p. 1 (Ex. D. at p. 1).

25 <sup>12</sup>*Id.*

26 <sup>13</sup>Doc. 106-2 at p. 31 (Ex. B at p. 30).

27 <sup>14</sup>Doc. 103-2 at p. 3 (Ex. B. at p. 2).

28 <sup>15</sup>No. 2:15-cv-323, 2016 WL 384929 (D. Nevada Jan. 27, 2016).

1 seeking mental health treatment and had attempted suicide, all of which she alleged  
2 related to her claims against defendant. The court deemed such distress sufficiently  
3 severe: "Hospitalization and attempted suicide are manifestations of unusually severe  
4 emotional distress."<sup>16</sup>

6 Finally, the record shows that Plaintiff does in fact plan to offer expert testimony  
7 about his mental health condition. Dr. Roman's report concludes that, as a result of his  
8 injuries, Plaintiff suffers from Major Depressive Disorder and concludes that Plaintiff's  
9 lifetime costs for psychological and psychiatric care will total over \$161,260.50.<sup>17</sup>

11 Plaintiff asserts that Dr. Roman is only his "future-medical-care expert" and will only  
12 testify about Plaintiff's need for some psychological and psychiatric treatment as part of  
13 his overall care for the physical injuries caused by Arctia's negligence.<sup>18</sup> In other words,  
14 Plaintiff asserts that his claim for damages stems only from his physical injuries.

16 However, claiming he needs lifetime mental health treatment to cope with the injuries  
17 suffered from the accident is the equivalent of claiming the accident caused mental  
18 health problems that should be accounted for if and when any damages are awarded.  
19 He has an expert slated to testify about what his lifetime psychological and psychiatric  
20 treatment will cost, which certainly puts Plaintiff's mental health condition and questions  
21 about the extent and severity of his mental health condition at issue here.

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26 <sup>16</sup>*Id.* at \*2.

27 <sup>17</sup>Doc. 106-2 (Ex. B.).

28 <sup>18</sup>Doc. 106 at p. 6.

1 Plaintiff cites to a case in this district, *Ruvane v. Elizabeth F, Inc.*,<sup>19</sup> in favor of his  
2 position that a psychological IME is not warranted. *Ruvane* is distinguishable. In that  
3 case the IME request was denied in part because Plaintiff had made it clear he was not  
4 claiming anything more than just typical emotional distress and was not seeking specific  
5 psychological damages.<sup>20</sup> Here, Plaintiff is asking for damages related to Major  
6 Depressive Disorder and the future treatment thereof. In *Ruvane*, the plaintiff did not  
7 have any witness designated to give testimony regarding emotional damages beyond  
8 “ordinary grief , anxiety, anger, and frustration any person feels when something bad  
9 happens.”<sup>21</sup> Again, Dr. Ramos is going to give testimony regarding the need for future  
10 psychological and psychiatric treatment. Also, the court in *Ruvane* noted that an IME is  
11 not warranted just because a defendant suggests there is a possible mental health  
12 explanation for a plaintiff’s complaint. Here, Arctia is not making such a claim. Rather,  
13 it wants to be able to provide evidence to respond to Plaintiff’s claim that he will need  
14 long-term mental health treatment as a result of the 2012 accident.

18 The court also concludes that Arctia has shown sufficient good cause for an IME  
19 here. First, evidence regarding the extent of Plaintiff’s mental health condition is clearly  
20 relevant given the discussion above. Second, Plaintiff is claiming ongoing emotional  
21 distress, as evidenced by the request for future damages for psychological and  
22 psychiatric care. Finally, he has an expert designated to discuss the need for and cost  
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26 <sup>19</sup>No. 3:15-cv-00079, 2016 WL 6514181 (D. Alaska Aug. 25, 2016).

27 <sup>20</sup>*Id.* at \*5.

28 <sup>21</sup>*Id.*

1 of such ongoing care. Arctia should have the opportunity to provide rebuttal evidence  
2 about the need for and cost of future treatment.

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4 **V. CONCLUSION**

5 Based on the preceding discussion, Arctia's motion to compel Plaintiff to submit  
6 for an IME with psychiatrist Dr. Richard Roniger is GRANTED. While Arctia has  
7 provided notice as to the person who will be performing the IME, it has not provided the  
8 other information required under Rule 35(a)(2)(B). Arctia is directed to file a notice  
9 within fourteen days of this order as to the time, place, manner, conditions, and scope  
10 of the examination.  
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12 DATED this 3<sup>rd</sup> day of April 2017.

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15 /s/ JOHN W. SEDWICK  
16 SENIOR JUDGE, UNITED STATES DISTRICT COURT  
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