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8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 Luz Hellman,

12 Plaintiff,

13 v.

14 Sheldon Weisberg and the State of
Arizona,

15 Defendants.
16

No. CV 06-1465-PHX-FJM

**MOTION TO FILE SECOND
SUPPLEMENTAL EXHIBIT TO
DEFENDANTS' RULE 37 MOTION
FOR BAR ON EVIDENCE IN SUPPORT
OF EMOTIONAL DAMAGES CLAIM,
AND FOR DISMISSAL OF
PLAINTIFF'S EMOTIONAL
DAMAGES CLAIM**

17 - AND -

18 **REQUEST FOR EXPEDITED RULING**

19
20 (Assigned to The Honorable Frederick J.
Martone)

21
22 Defendants, by and through undersigned counsel, hereby request leave to file an
23 additional exhibit to support their Motion for Bar on Evidence in Support of Emotional
24 Damages Claim, and For Dismissal of Plaintiff's Emotional Damages Claim ("Rule 37
25 Motion"). The exhibit consists of deposition testimony Defendants obtained during the
26 June 21, 2007 deposition of Plaintiff's physician, John J. Wells, M.D., taken after
27 Defendants had filed their Reply in support of their Rule 37 Motion. Plaintiff disclosed
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1 Dr. Wells as an individual who provided her treatment relevant to her claim for “intense
2 emotional distress.” [Exhibits 1 and 4 to Defendants’ Rule 37 Motion] Plaintiff refused
3 to provide her medical records or medical releases until it was too late for Defendants to
4 obtain relevant medical records and obtain expert witness testimony and an independent
5 medical examination to test and rebut Plaintiff’s “intense emotional distress” claim.

6 Plaintiff argued in her opposition to Defendants’ Rule 37 Motion that Defendants
7 were not prejudiced by Plaintiff’s failure to produce her records or releases because
8 “Defendants will consequently have the opportunity to fully investigate Ms. Hellman’s
9 medical condition” by deposing Plaintiff’s treating physicians. [Response at p. 3] Dr.
10 Wells admitted he did not even evaluate Plaintiff’s mental or psychological state:

11 Q. Okay. Did you, at any time during your care and treatment
12 of Ms. Hellman, evaluate her mental state?

13 A. No.

14 Q. At any time during your care and treatment of Ms. Hellman,
15 did you evaluate her psychological state?

16 A. No.

17 [John J. Wells, M.D. Deposition, p. 36 lines 21-25; p. 37, line 1, copies attached hereto
18 as Exhibit A.] Defendants request that the Court consider this additional testimony as
19 additional support for Defendants’ position that they are prejudiced by Plaintiff’s
20 conduct in discovery.

21 Defendants request an expedited ruling on this motion. A proposed Order has
22 been submitted for the Court’s convenience.

23 RESPECTFULLY SUBMITTED this 26th day of June, 2007.

24 TERRY GODDARD
25 Attorney General

26 s/Rachel M. Bacalzo
27 William A. Richards
28 Assistant Attorneys General
Attorneys for Defendants

I certify that I electronically
transmitted the attached document
to the Clerk’s Office using the
CM/ECF System for filing and

1 transmittal of a Notice of Electronic
2 Filing to the following, if CM/ECF
3 registrants, and mailed a copy of
4 same to any non-registrants, this
5 26th_day of June, 2006 to:

6 Stephen Montoya
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10 Attorneys for Plaintiff

11 s/Bonnie McMurray
12 Secretary to Rachel M. Bacalzo

13 #18568

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