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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

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9 Stephanie Spain,

10 Plaintiff,

11 v.

12 Sundt Construction, Inc., an Arizona  
13 corporation,

14 Defendant.

No. CV 11-01617-PHX-JAT

**ORDER**

15 Pending before the Court is Defendant's Motion to Compel Mental Independent  
16 Medical Examination of Plaintiff (Doc. 44). Plaintiff has not filed a response to the  
17 Motion. The Court now rules on the Motion.

18 Defendant moves, pursuant to Federal Rule of Civil Procedure 35(a), for the Court  
19 to compel an independent mental medical examination of Plaintiff. Defendant argues  
20 that there is good cause to conduct an independent mental medical examination of  
21 Plaintiff because (1) she has put her mental condition in controversy by alleging that  
22 Defendant caused her to suffer "extreme mental and emotional" injuries and by alleging  
23 the her current damages are the result of mental injuries caused by Defendant; (2)  
24 Plaintiff's medical records reveal that she has been treated for mental conditions since  
25 she was four years old; and (3) Plaintiff has forgotten several of the mental health  
26 specialists that have treated her over the years making it difficult, if not impossible, for  
27 Defendant to obtain the full details of any pre-existing mental injuries Plaintiff may have  
28 had prior to the alleged harassment in this case. Defendant has proposed that a board-

1 certified psychiatrist conduct the examination and has attached the doctor's Curriculum  
2 Vitae to the Motion to Compel. Plaintiff has not responded to the Motion to Compel.

3 Federal Rule of Civil Procedure 35(a) provides,

4 **a) Order for an Examination.**

5 **(1) In General.** The court where the action is pending may  
6 order a party whose mental or physical condition--including  
7 blood group--is in controversy to submit to a physical or  
8 mental examination by a suitably licensed or certified  
9 examiner. The court has the same authority to order a party to  
10 produce for examination a person who is in its custody or  
11 under its legal control.

12 **(2) Motion and Notice; Contents of the Order.** The order:

13 **(A)** may be made only on motion for good cause and on  
14 notice to all parties and the person to be examined; and

15 **(B)** must specify the time, place, manner, conditions, and  
16 scope of the examination, as well as the person or persons  
17 who will perform it.

18 Fed. R. Civ. P. 35(a)(1)-(2).

19 "A plaintiff in a negligence action who asserts mental or physical injury, . . . places  
20 that mental or physical injury clearly in controversy and provides the defendant with  
21 good cause for an examination to determine the existence and extent of such asserted  
22 injury." *Schlagenhauf v. Holder*, 379 U.S. 104, 119 (1964) (internal citations omitted).  
23 Defendant has shown that Plaintiff has placed the cause of any mental injury she may  
24 have in controversy. Plaintiff has failed to rebut or otherwise oppose this assertion.<sup>1</sup>  
25 Accordingly, Defendant has shown good cause for an independent mental medical  
26 examination of Plaintiff.

27 Based on the foregoing,

28 **IT IS ORDERED** that Defendant's Motion to Compel Mental Independent  
Medical Examination of Plaintiff (Doc. 44) is granted as follows:

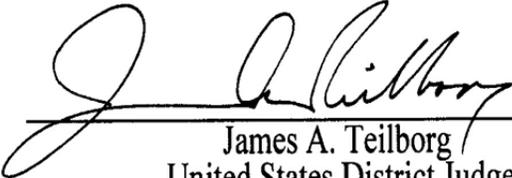
**IT IS ORDERED** that Plaintiff shall appear for an independent medical mental

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<sup>1</sup> Plaintiff is warned that failure to respond to motions may be deemed consent to the granting of such motions pursuant to LRCiv 7.2(i).

1 examination on December 18, 2012 at 8:00 a.m. at Steven Pitt & Associates, 15849 North  
2 71st Street, Suite 100 Scottsdale, AZ 85254-2179. The examination shall be video and  
3 audio-recorded. No third parties will be permitted to sit in during the examination.  
4 Following an interview with the doctor, Plaintiff shall take a pencil and paper  
5 psychological test.

6 Dated this 21st day of November, 2012.

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12 James A. Teilborg  
13 United States District Judge  
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