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(SPACE BELOW FOR FILING STAMP ONLY)

6 Attorneys for Defendant
 7 WALBRO ENGINE MANAGEMENT LLC

8 UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA

11 ALICE HOLMES AND VERNON
 12 HOLMES,

13 Plaintiffs,

14 v.

15 HOME DEPOT USA, INC.; MTD
 16 PRODUCTS, INC.; BRIGGS &
 17 STRATTON CORPORATION; WALBRO
 18 CORPORATION; AND DOES 1 to 50,
 19 Inclusive,

20 Defendants.

Case No. 1:06-cv-01527 -SMS

**STIPULATION CONCERNING
 PHYSICAL EXAMINATION OF
 PLAINTIFF, ALICE HOLMES AND
 ORDER**

[Federal Rule of Civil Procedure 35]

21 This Stipulation concerning the physical examination of Plaintiffs ALICE HOLMES is
 22 entered into by and between Plaintiffs ALICE HOLMES AND VERNON HOLMES and
 23 Defendants HOME DEPOT USA, INC.; MTD CONSUMER GROUP, INC.; BRIGGS &
 24 STRATTON CORPORATION; and WALBRO ENGINE MANAGEMENT LLC (hereinafter
 25 collectively referred to as “the Parties”), and is made in reference to the following facts:

26 A. The Parties have agreed that Plaintiff, ALICE HOLMES will undergo a physical
 27 examination pursuant to Federal Rule 35 because her physical conditions, specifically the nature
 28 and extent of their injuries, if any, sustained in an August 7, 2005 grass fire at the Coulterville,
 California acreage are in controversy in this case. Also in controversy is Plaintiff, ALICE
 HOLMES’ need, if any, for future medical care and treatment for the injuries she allegedly

1 sustained in the August 7, 2005 grass fire.

2 B. Under Federal Rule of Civil Procedure 35, this Court may order a party to submit
3 to a physical examination when a party's mental or physical condition is in controversy in the
4 case. Plaintiff, ALICE HOLMES is a party in this case. The physical condition of Plaintiff,
5 ALICE HOLMES is in controversy in this case.

6 C. As to Plaintiff, ALICE HOLMES, the parties have agreed that Plaintiff will
7 present to licensed California physician, Donald Huene, M.D., who is board certified in
8 Orthopedic Surgery by the American Board of Orthopaedic Surgery, for a physical examination
9 to be performed by Dr. Huene.

10 (1) Plaintiff's physical examination by Dr. Huene is scheduled to occur on
11 **March 16, 2009 at 9:00 a.m.** at the Office of Donald R. Huene, M.D., 201 North Valeria, Fresno,
12 California 93701 (559) 233-2541.

13 (2) The nature of the examination will be a routine complete physical
14 examination. The scope of the examination will include obtaining a history from the patient; a
15 review of the patient's medical records; and a general physical examination, including, but not
16 limited to, upper and lower extremities, head, neck, shoulders, back, hips, pelvis, knees, motor
17 sensation, reflexes, and any other part of Plaintiff's body claimed to have been injured in the
18 subject accident. The examination also may require radiographic studies if necessary.

19 No invasive procedures, such as blood or urine samples, will be required. Plaintiff will
20 not submit to any diagnostic test or procedure that is painful, protracted, or intrusive, whether or
21 not said testing is deemed relevant.

22 Plaintiff will not discuss nor answer any questions as to how the fire that underlies this
23 case occurred. Plaintiff will answer questions concerning the nature and extent of her injuries
24 sustained in the fire and the nature and extent of her present complaints. Defense counsel will
25 instruct Dr. Huene to make only such inquiries of Plaintiff as are medically necessary for Dr.
26 Huene to form his medical conclusions and opinions.

27 (3) Plaintiffs' counsel may record or may designate a representative to record
28 the entire audio content of the physical examination. Plaintiffs' counsel shall inform defense

1 counsel of the full names of any persons who will be present with Plaintiff at her examination so
2 that Dr. Huene and his staff may be informed in writing of their names and will authorize these
3 persons to be present for the examination in accordance with Dr. Huene's practice of preserving
4 the medical privacy rights of patients.

5 (4) The physical examination of Plaintiff is expected be completed within two
6 hours. Dr. Huene requires at least a fourteen (14) day cancellation notice. Plaintiff, ALICE
7 HOLMES, will be responsible for Dr. Huene's service charge for any failure to comply with this
8 cancellation policy.

9 (5) Dr. Huene's fees for performing this examination will be shared by all
10 Defendants in this case. Defendants will provide Plaintiffs' counsel with a copy of Dr. Huene's
11 written report concerning his findings and his opinions formed in the course of performing his
12 physical examination of Plaintiff and through his review of Plaintiff's medical records. The
13 report will set forth the history and examinations and any findings, diagnoses and prognoses made
14 by Dr. Huene. Every effort will be made to provide Dr. Huene's report to Plaintiffs' counsel
15 within 30 days of the date of the Plaintiff's physical examination.

16 ACCORDINGLY, the Parties hereto, by and through their respective attorneys of record,
17 STIPULATE AND AGREE to the following order:

18 That Plaintiff, ALICE HOLMES present to licensed California physician, Donald
19 R. Huene, M.D., Orthopedic Surgeon, for a physical examination to be performed by Dr. Huene
20 on **March 16, 2009 at 9:00 a.m.** at the Office of Donald R. Huene, M.D., 201 North Valeria,
21 Fresno, California 93701 (559) 233-2541. That all parties and their respective counsel comply
22 with the above terms and conditions under which Plaintiff's physical examination is to take place.

23 The parties, by one of the undersigned counsel for each party, agree that this
24 **STIPULATION CONCERNING THE PHYSICAL EXAMINATIONS OF PLAINTIFF,**
25 **ALICE HOLMES AND (PROPOSED) ORDER** may be signed by counsel pursuant to Local
26 Court Rule 7-131(e), and that all counsel listed below have authorized the submission of this
27 **STIPULATION AND (PROPOSED) ORDER** to this Court.

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IT IS SO STIPULATED:

Dated: February 13, 2009

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

By: /s/ Mark Busick
(as authorized on January 9, 2009)

Mark B. Busick
Attorneys for Defendant
WALBRO ENGINE MANAGEMENT LLC
BARADAT, EDWARDS & PABOOJIAN

Dated: February 13, 2009

By: /s/ Warren Paboojian
(as authorized on February 11, 2009)

Warren R. Paboojian
Attorneys for Plaintiffs
ALICE HOLMES and VERNON HOLMES

Dated: February 13, 2009

JENKINS, GOODMAN, NEUMAN &
HAMILTON

By: /s/ Tom Proutzos for Joshua Goodman
(as authorized on February 5, 2009)

Joshua S. Goodman
Attorneys for Defendant
HOME DEPOT
PORTER, SCOTT, WEIBERG &
DELEHANT

Dated: February 13, 2009

By: /s/ Chris Egan
(as authorized on January 9, 2009)

Anthony S. Warburg
Chris Egan
Attorneys for Defendant
MTD PRODUCTS, INC.
DRYDEN, MARGOLES, SCHIMANECK &
WERTZ

Dated: February 13, 2009

By: /s/ Chris Egan
(as authorized on January 17, 2009)

Lawrence A. Margoles
Samuel M. Zaif
Attorneys for Defendants
BRIGGS & STRATTON CORPORATION

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ORDER

GOOD CAUSE HAVING BEEN SHOWN AND THE PARTIES HAVING STIPULATED TO THE SAME, the Court finds that the above-stated **STIPULATION CONCERNING THE PHYSICAL EXAMINATIONS OF PLAINTIFF, ALICE HOLMES** is sanctioned by the Court, pursuant to Federal Rule of Civil Procedure 35 and shall be and now is the Order of the Court. All Parties in this action shall abide by the terms of this **STIPULATED ORDER CONCERNING THE PHYSICAL EXAMINATIONS OF PLAINTIFF, ALICE HOLMES.**

IT IS SO ORDERED

Dated: 2/17/2009

/s/ Sandra M. Snyder
SANDRA M. SNYDER
U.S. MAGISTRATE JUDGE