

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TERRY SOUTHARDS,

Plaintiff,

vs.

CONAGRA FOODS,

Defendants.

Case No. 1:08-cv-00064 AWI TAG

**ORDER FOR MEDICAL
EXAMINATION OF PLAINTIFF
UPON STIPULATION OF PARTIES**

On March 13, 2009, Defendant filed a Stipulation and Joint Request Concerning the Defense Medical Examination of Plaintiff Terry Southards. (Doc. 9). On March 16, 2009, the Court denied the parties' request without prejudice. (Docs. 10, 11). On March 27, 2009, the parties filed another Stipulation and Joint Request Concerning the Defense Medical Examination of Plaintiff Terry Southards. (Doc. 13).

The Court has read and considered the March 27, 2009 Stipulation, finds that good cause exists to grant it, and makes the following order:

1. Plaintiff Terry Southards is directed to appear for a defense medical examination at 9:30 a.m. on April 16, 2009, at the Sacramento Ear Nose and Throat Hearing Aid Center, 1111 Exposition Blvd., Bldg. 700, Sacramento, California 95815;
2. The examination will be conducted by Dr. Kevin McKennan and various members of his staff, at Dr. McKennan's direction;

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- 1 3. The examination will last approximately 3 to 4 hours. At 9:30 a.m., an audiogram
2 and a VNG will be administered.¹ At 11:15 a.m., the defense medical examination
3 will take place, which will consist of taking a history and performing an examination
4 of Mr. Southards.
- 5 4. The Court notes that according to the Stipulation, counsel for Defendant, ConAgra,
6 has provided instructions to counsel for Plaintiff, Terry Southards, as to guidelines for
7 Mr. Southards to follow before the test is administered (i.e, no alcohol and no
8 medications such as sleeping pills, tranquilizers, antihistamines, anti-dizziness
9 medications, anti-depressants, anti-anxiety medications, diuretics, pain medications,
10 sedative, muscle relaxants and barbiturates are to be taken 48 hours before the test).
11 Counsel for Plaintiff indicate, in regard to these guidelines, that Mr. Southards'
12 doctor, Dr. Lefors, believes Mr. Southards needs to be on Topamax. Defendant
13 ConAgra reports that it has talked to Dr. McKennan's office who has advised that if
14 Mr. Southards cannot stop taking Topamax 72 hours before the scheduled VNG, he
15 has to inform the tester that he is on that medication.
- 16 5. Defendant ConAgra Foods is directed to pay for the reasonable expense incurred by
17 Mr. Southards to travel to Sacramento, which includes gas, reasonable lodging, and
18 meal expenses not to exceed \$40/day.
- 19 6. Plaintiff will not record the examination and will not have anyone on behalf of
20 Plaintiff attend the examination.
- 21 7. Defendant ConAgra Foods, Inc., is not required to submit an expert report/defense
22 medical report of Dr. McKennan until May 9, 2009.

23
24 IT IS SO ORDERED.

25 Dated: April 1, 2009
26 _____
27 _____

/s/ Theresa A. Goldner
UNITED STATES MAGISTRATE JUDGE

28 ¹An audiogram records what a patient can hear and a VNG is a test designed to give physician information about the function of the inner ear balance system. The parties report that the test takes approximately 60 minutes to complete.