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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

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

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

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

23 1. Plaintiff Terry Southards is directed to appear for a defense medical examination at  
24 9:30 a.m. on April 16, 2009, at the Sacramento Ear Nose and Throat Hearing Aid  
25 Center, 1111 Exposition Blvd., Bldg. 700, Sacramento, California 95815;  
26 2. The examination will be conducted by Dr. Kevin McKennan and various members of  
27 his staff, at Dr. McKennan's direction;

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

24 IT IS SO ORDERED.

25 || Dated: April 1, 2009

/s/ Theresa A. Goldner  
UNITED STATES MAGISTRATE JUDGE

<sup>1</sup>An 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.