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 13 Corrections Corporation of America and
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 14

15 **UNITED STATES DISTRICT COURT**
 16 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

18 TERRY SANDRES, an individual,

19 Plaintiff,

20 vs.

21 CORRECTIONS CORPORATION OF)
 22 AMERICA, a Maryland corporation; and)
 23 Does 1 through 50, inclusive,)

24 Defendants.)

) Case No. 1:09-cv-01609-OWW-DLB

) **STIPULATION AND ORDER FOR**
) **PLAINTIFF TERRY SANDRES TO**
) **SUBMIT TO MENTAL EXAMINATION**

) District Judge: Hon. Oliver W. Wanger
) Magistrate: Hon. Jennifer L. Thurston
) Action Filed: July 24, 2009
) Trial Date: August 30, 2011

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1 IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, by their
2 respective counsel, that plaintiff Terry Sandres (“Plaintiff”) will submit to a mental examination to
3 be conducted by Dr. Francine B. Kulick (“Dr. Kulick”) on a date and time mutually agreeable to all
4 parties prior to the expert discovery cut-off date of April 1, 2011, at 1541 Ocean Ave., Suite 200,
5 Santa Monica, California 90401. The purpose of the examination is to determine the existence,
6 extent and nature of any damages to, or abnormality of, Plaintiff’s mental and emotional condition
7 and whether such damages and/or abnormality were allegedly caused by defendants Corrections
8 Corporation of America and/or CCA of Tennessee, LLC (hereinafter collectively referred to as
9 “Defendants”).

10 IT IS FURTHER STIPULATED that the examination is authorized by Federal Rules of
11 Civil Procedure (“FRCP”) Rule 35(b)(6), in that Plaintiff has placed his mental condition in
12 controversy in this action by alleging mental and emotional injury and distress of a lasting nature,
13 and that good cause exists for the examination.

14 IT IS FURTHER STIPULATED that the nature, scope, conditions and manner of the
15 examination are to be as follows:

16 1. No persons other than Plaintiff and Dr. Kulick (or anyone on Dr. Kulick’s staff who
17 is necessary for the examination) may be present.

18 2. Plaintiff and Dr. Kulick each have the right to audiotape the examination, but the
19 examination shall not be videotaped. Dr. Kulick’s office will not take any photographs,
20 fingerprints, or other identification information from Plaintiff, including but not limited to driver’s
21 license, Social Security number, and home address.

22 3. Plaintiff may make an audio recording of the examination. Dr. Kulick and her staff
23 will accommodate all reasonable requests to accomplish this recording including, but not limited
24 to, taking any necessary breaks during the examination, taking a break if technical difficulties arise,
25 making available electrical outlets, and all other reasonable accommodations to allow the effective
26 recording of the mental examination.

27 4. Plaintiff shall not be required to fill out any patient information forms of any type
28 whatsoever, including, but not limited to, (new patient) forms, insurance forms, identification

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1 forms, authorizations for records, arbitration form waivers and releases, and will not be asked to do
2 so by Dr. Kulick or her staff.

3 5. The examination may only be conducted by Dr. Kulick. The examination will
4 proceed on the following terms:

5 a. Said oral examination shall not delve into the following areas, which are
6 protected by the California Constitutional right of privacy:

7 i. Dr. Kulick is permitted to inquire concerning the general health of
8 family members and the existence of medical and mental conditions
9 and whether treatment was received; however, Plaintiff is not to be
10 questioned regarding the specifics of any treatment, names of treating
11 physicians, and details of the medical or mental conditions as the
12 right to privacy of third parties are an issue.

13 ii. Plaintiff is not to be questioned concerning his conversations with his
14 counsel, or any other person affiliated with his counsel or his
15 counsel's office, including but not limited to Appell Hilaire &
16 Benardo LLP.

17 iii. Plaintiff is not to be questioned concerning his counsel's evaluation
18 of his claims against Defendants, nor is Plaintiff to be questioned
19 about any discussions Plaintiff has had with his counsel regarding
20 such evaluations, as that is invasive of the attorney-client and
21 attorney work-product privileges.

22 6. Plaintiff shall be permitted to take reasonable breaks during the examination
23 process, including but not limited to taking a lunch break, rest breaks, and bathroom breaks.

24 7. Defendants are to immediately transmit a copy of this Stipulation to Dr. Kulick and
25 promptly advise her that she must comply with the limitations imposed by the Stipulation. By
26 proceeding with the examination, Dr. Kulick shall be deemed to have consented to the terms of this
27 Stipulation, and she agrees to abide by its terms.

28 8. Counsel for Plaintiff shall be provided with a report from the examination, as well

1 as notes taken during the exam, and records relied upon to reach an opinion or diagnosis, within ten
2 (10) days of the examination by fax or hand-delivery. In keeping with the standard practices and
3 procedures of her industry, Dr. Kulick will not provide counsel for either party, nor their
4 representatives or retained experts, a copy of, or the actual, test questions from the Minnesota
5 Multiphasic Personality Inventory-2 (“MMPI-2”). However, upon request by Plaintiff’s counsel,
6 Dr. Kulick shall provide Plaintiff’s answer sheet from the MMPI-2 as well as the accompanying
7 interpretive report of Plaintiff’s answers. In keeping with FRCP Rules 35(b)(1)-(5), Dr. Kulick’s
8 expert report to be provided to the examined party will “set out in detail the examiner’s findings,
9 including diagnoses, conclusions, and the results of any tests.” The aforementioned documents in
10 Paragraph 8 shall be provided to counsel for Plaintiff without the need for counsel for Plaintiff to
11 request said documents.

12 9. Defendants and their respective counsel will use and/or disseminate documentation
13 of the examination only for purposes of this litigation. The tests taken by Plaintiff as part of the
14 mental examination, along with any notes and/or written reports and/or records maintained in any
15 format, including electronic data, by Dr. Francine B. Kulick are confidential medical records
16 relating to Plaintiff’s mental health. These records are confidential but may be used by the parties
17 as exhibits and in preparation for trial, in trial, and in other proceedings in this matter, but for no
18 other purposes. Defense counsel may not give these records to anyone except members of their
19 respective law firms, to the degree necessary to prepare copies or exhibits. Any information
20 acquired or learned or any evaluation made in violation of this agreement will not be admissible in
21 evidence for any purpose. The parties further agree that the Court may, upon motion at trial, strike,
22 preclude, or limit any testimony of the examiner as appropriate, and Plaintiff is not waiving his
23 right to such relief by agreeing to this examination. The parties reserve the right to seek whatever
24 sanctions they may deem appropriate.

25 10. Disclosure, production and delivery of any reports regarding the examination shall
26 be governed by FRCP Rule 35.

27 11. The examination shall consist of a clinical interview and the administration of the
28 MMPI-2. The examination will be performed by Dr. Kulick, a clinical psychologist. Absent

1 unforeseen circumstances, the examination shall be completed in one day.

2 12. Counsel for Plaintiff shall have the opportunity to depose Dr. Kulick, subject to her
3 standard deposition fee of \$525 per hour, within a reasonable time after being provided with her
4 report and related documents as provided in Paragraph 8 above.

5 13. This agreement represents the entire and complete scope of the agreement between
6 Plaintiff and Defendants for the mental examination of Plaintiff. All express or implied statements
7 or representations are part of this agreement. This agreement shall be modified or changed only
8 upon the express written statement of all parties to the agreement. Nothing herein shall be
9 construed as a waiver of Plaintiff's privacy rights, medical privacy rights, doctor-patient privileges,
10 or psychotherapist-patient privileges. Nothing herein shall be construed as a waiver of Plaintiff's
11 right to challenge the admissibility or appropriateness of any opinion or testimony.

12 IT IS SO STIPULATED.

13 Dated: March 3, 2011

APPELL HILAIRE BERNARDO LLP

14 /s/ Barry M. Appell
15 (As authorized on 3/3/11)

16 By: _____
17 Barry M. Appell
18 Attorneys for Plaintiff Terry Sandres

18 Dated: March 3, 2011

GLEASON & FAVOROTE LLP

19 /s/ Kathy H. Gao

20 By: _____
21 Kathy H. Gao
22 Attorneys for Defendants
23 Corrections Corporation of America and CCA
24 of Tennessee, LLC
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ORDER

IT IS SO ORDERED that plaintiff Terry Sandres submit to mental examination pursuant to the terms and conditions set forth and agreed upon by counsel for the parties to the above-captioned matter in the Stipulation for Plaintiff Terry Sandres to Submit to Mental Examination.

IT IS SO ORDERED.

Dated: March 4, 2011

/s/ OLIVER W. WANGER
United States District Judge