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11 Attorneys for Defendants
12 THE GEO GROUP, INC. dba GEO CALIFORNIA,
13 INC. and GEO CORRECTIONS AND
14 DETENTION, LLC

15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA

17 JOSEPHINE HERNANDEZ,
18 Plaintiff,

19 v.

20 THE GEO GROUP, INC. dba GEO
21 CALIFORNIA, INC., a Florida
22 corporation; GEO CORRECTIONS
23 AND DETENTION, LLC, a Florida
24 limited liability company; and DOES 1
25 through 20, inclusive,

26 Defendants.

Case No. 1:15 cv 01813 - JLT

*ASSIGNED FOR ALL PURPOSE TO
HON. JENNIFER L. THURSTON*

**STIPULATION OF THE PARTIES
TO ALLOW DEFENDANTS TO
CONDUCT A DEFENSE MENTAL
EXAMINATION OF PLAINTIFF
AND [PROPOSED] ORDER**

(Doc. 24)

1 Plaintiff JOSEPHINE HERNANDEZ (“Plaintiff”), by and through her
2 counsel of record, and Defendants THE GEO GROUP, INC. dba GEO
3 CALIFORNIA, INC. and GEO CORRECTIONS AND DETENTION, LLC
4 (“Defendants”) (collectively, the “Parties”), by and through their counsel of record,
5 hereby stipulate and agree as follows:

6 WHEREAS, on October 28, 2015, Plaintiff filed a Complaint in the
7 above-captioned matter, in the Superior Court of California, County of Kern, State
8 Case No. BCV-15-101338;

9 WHEREAS, on December 3, 2015, Defendants removed this matter to
10 the United States District Court for the Eastern District of California , Case No. 1:15
11 cv 01813 – JLT;

12 WHEREAS, Plaintiff alleges various claims against Defendants,
13 including claims for intentional infliction of emotional distress and negligent infliction
14 of emotional distress, thereby putting her mental and emotional health directly at
15 issue;

16 WHEREAS, the Parties have agreed that Defendant may conduct a
17 Defense Mental Examination of Plaintiff (the “DME”) pursuant to Rule 35 of the
18 Federal Rules of Civil Procedure; and,

19 WHEREAS, Defendants have retained JAMES ROSENBERG, M.D.
20 (“Dr. Rosenberg”) for purposes of performing a DME;

21 THEREFORE, it is hereby stipulated and agreed that Plaintiff will submit
22 to a mental examination, to be conducted by Dr. Rosenberg on January 9, 2016 at
23 11:00 a.m. The parties agree that the time for an examination varies from examinee to
24 examinee, and that the time set forth herein is only an estimate of the time needed to
25 complete the examination. The examination will take place at the Bakersfield Marriott
26 at the Convention Center, 801 Truxtun Avenue, Bakersfield, California 93301
27 beginning at 11:00 a.m., to evaluate the nature and extent of Plaintiff’s mental health,
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1 anguish and emotional distress as it relates to the claims set forth in her Complaint.

2 IT IS FURTHER STIPULATED that the time, place, manner, conditions,
3 and scope of the examination are to be as follows:

4 The mental examination will be performed by James Rosenberg, M.D.
5 Dr. Rosenberg is a physician licensed to practice medicine in the State of California.
6 He is board-certified in psychiatry with added qualifications in forensic psychiatry by
7 the American Board of Psychiatry & Neurology, Inc. In addition to providing
8 psychiatric evaluations and treatment in a patient care setting, he has conducted over
9 1,000 forensic examinations.

10 Dr. Rosenberg will conduct a psychiatric examination of Plaintiff to
11 assist Defendants and the trier of fact in understanding the origin, nature, and alleged
12 severity of Plaintiff's alleged mental health injuries which Plaintiff alleges arose out
13 of her employment and termination of her employment with Defendants, and in turn,
14 prognosis and future treatment needs, if applicable.

15 The examination will require a face-to-face interview and mental status
16 examination, and will span approximately six to seven hours, excluding breaks. It will
17 consist of a detailed interview, mental status examination, and appropriate, generally
18 accepted standardized psychological testing and screening cognitive assessment. The
19 testing may include, depending upon time constraints and other factors, the MMPI-2-
20 RF, PAI, TSI-2 and MMSE-2. The psychiatric interview will cover a variety of
21 relevant topics, including only pertinent background information; the reported
22 circumstances of onset of the alleged emotional injury or injuries; and how those
23 symptoms have unfolded over time to the present, including any other assessments,
24 treatment, or functional impairment.

25 Pertinent areas of inquiry with regard to Plaintiff's background include
26 developmental history, education, employment, social and marital history, legal
27 history (such as disability claims, if any), general medical history, prior psychiatric
28 history, substance use, and family history. Dr. Rosenberg may request from Plaintiff a

1 detailed account of the onset and course of her emotional problems related to the
2 alleged conduct of the Defendants, culminating in a review of current psychiatric and
3 physical complaints.

4 The examination will not involve any physical examination, or entail any
5 blood tests or other intrusive medical studies or procedures.

6 Dr. Rosenberg will voice-record the examination, either digitally or via
7 audio tape. Dr. Rosenberg will timely provide a copy of the audio tape to Plaintiff's
8 counsel pursuant to FRCP 35. This audio tape is for the purposes of Dr. Rosenberg in
9 making his assessment and drafting any report. The Plaintiff may also voice-record
10 the examination, but no one other than Plaintiff and Dr. Rosenberg may be present in
11 the room during the evaluation. The audio-recorders must be "off" during the
12 psychological testing to protect the test questions from dissemination into the public
13 domain.

14 The mental examination will not be unnecessarily painful, protracted, or
15 intrusive. Plaintiff will not be required to disrobe.

16 Plaintiff is not to be questioned concerning her conversations with her
17 counsel, or any other person affiliated with her counsel or her counsel's office and
18 Plaintiff has the right to refuse to answer a question if doing so would divulge
19 attorney-client communications.

20 The Parties agree that the results of the psychological testing in this
21 matter will be kept confidential and only used for purposes of the litigation

22 Plaintiff shall bring with her any glasses or hearing aids that she will
23 need for the oral interview and written testing.

24 Defendants shall transmit a copy of this Stipulation to Dr. Rosenberg. By
25 proceeding with the examination, Dr. Rosenberg shall be deemed to have consented to
26 the terms of this Stipulation, and he agrees to abide by its terms.

27 **IT IS FURTHER STIPULATED** Dr. Rosenberg's cancellation policy
28 requires notification of cancellation at least 24 hours in advance of the time scheduled

1 for the DME. Should Plaintiff cancel the DME with less than 48 hours-notice or fail to
2 appear for her scheduled examination and fail to comply with this policy, she shall be
3 responsible for reimbursing Dr. Rosenberg in the amount of \$1,700.00. Also, should
4 Plaintiff fail to appear or cancel her appointment with Dr. Rosenberg, Plaintiff shall
5 diligently work with Defendants in order to reschedule the examination at the next
6 mutually available date that both Plaintiff and Dr. Rosenberg have available, and prior
7 to the discovery cut-off deadline in this matter. Neither party will be responsible for
8 any costs incurred by the other party as a result of any cancellation made less than 48-
9 hours before the DME, which is caused by an emergency, such as illness, injury or
10 other similar circumstance that prohibits the DME from proceeding.

11 **IT IS FURTHER STIPULATED** that the exchange or delivery of
12 reports based on this examination shall be in compliance with the provisions of
13 Federal Rule of Civil Procedure 35 and in accordance with the Code Dr. Rosenberg
14 will comply with timely providing Plaintiff's counsel with a copy of any and all
15 reports. This agreement, however, is not intended to be construed to preclude the
16 disclosure of such reports pursuant to other provisions of the Federal Rules of Civil
17 Procedure.

1 **IT IS FURTHER STIPULATED** that good cause exists for this
2 examination because Plaintiff has placed her mental condition in controversy in this
3 case.

4 Dated: December 15, 2016

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7 /s/ Carlos Jimenez
8 **CARLOS JIMENEZ**
9 **JESSICA S. KANG**
10 **LITTLER MENDELSON, P.C.**
11 **Attorneys for Defendants**
12 **THE GEO GROUP, INC. DBA GEO**
13 **CALIFORNIA, INC. AND**
14 **GEO CORRECTIONS AND DETENTION, LLC**

15 Dated: December 15, 2016

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17
18 /s/ Allyson Thompson
19 **ALLYSON K. THOMPSON**
20 **ALIS M. MOON**
21 **KRING & CHUNG, LLP**
22 **Attorneys for Plaintiff**
23 **JOSEPHINE HERNANDEZ**

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IT IS SO ORDERED.

Dated: **December 19, 2016**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE