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

JOHN GRIFFITHS,

 Plaintiff,

 v.

WAL-MART STORES, INC., a
corporation; and DOES 1 through 20,
inclusive,

 Defendants.

Case No. 1:16-cv-01438-DAD-JLT

ORDER GRANTING JOINT STIPULATION
FOR MENTAL EXAMINATION OF
PLAINTIFF PURSUANT TO F.R.C.P. RULE 35

The Court has considered the parties’ Joint Stipulation for Mental Examination of Plaintiff filed October 20, 2017. Good cause appearing, IT IS HEREBY ORDERED:

1. Plaintiff JOHN GRIFFITHS (“Plaintiff”) and Defendant WAL-MART STORES, INC. (“Defendant”), will submit to a mental examination to be conducted by Dr. James Rosenberg, M.D., on November 13, 2017 at 10:00 a.m., at Spring Hill Suites by Marriott, 113 E. Sydnor Avenue, Ridgecrest, California 93555.
2. The examination is authorized by F.R.C.P. Rule 35 because Plaintiff has placed his mental condition in controversy in this action by alleging mental and emotional injury and distress of a lasting and/or severe nature which he contends was caused by Defendant and that good cause exists for the examination.

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1 3. The nature, scope, conditions and manner of the examination are to be as follows:

2 A. Plaintiff will submit to a mental examination to be conducted by Dr.
3 Rosenberg, to evaluate the nature and extent of Plaintiff's claims of mental and emotional
4 distress, as set forth in the operative Complaint and of which Plaintiff intends to introduce
5 evidence of at trial.

6 B. Defendant represents the following: Dr. Rosenberg is a physician licensed
7 to practice medicine in the State of California. Dr. Rosenberg received his medical degree from
8 the UCLA School of Medicine, and completed a transitional internship, a residency in psychiatry
9 at the UCLA Neuropsychiatric Institute, and a fellowship in forensic psychiatry at Case Western
10 Reserve University School of Medicine in Cleveland, OH. Dr. Rosenberg is board-certified in
11 psychiatry by the American Board of Psychiatry & Neurology, Inc. In addition to his extensive
12 teaching and patient-care experience, he has conducted over 1,000 medico-legal evaluations. A
13 complete copy of Dr. Rosenberg's curriculum vitae is attached as Exhibit A.

14 C. Dr. Rosenberg will conduct a psychiatric examination of Plaintiff in regard
15 to Plaintiff's alleged complaints of psychiatric injury and its sequelae, including the origin,
16 nature, and severity of Plaintiff's alleged mental health injuries, and in turn, prognosis and future
17 treatment needs, if applicable. The inquiries made by Dr. Rosenberg shall be limited to Plaintiff's
18 family history, educational history, social history, past medical history, past developmental
19 history, past psychological/psychiatric history, substance abuse history, employment history, legal
20 history, history of his employment for Defendant, and psychological/psychiatric treatment
21 following the work for Defendant. Plaintiff may be asked about the general health of family
22 members and existence of medical or mental conditions and whether treatment was received by
23 any one of them. However, Plaintiff is not to be questioned regarding the specifics of any
24 treatment, names of treating physicians and details of the medical or mental conditions as the
25 rights of privacy of third parties are in issue. Plaintiff may be asked if he ever underwent any
26 form of psychological treatment, when, where, the number of sessions of treatment, the name of
27 the healthcare provider, any medications prescribed, and the general reason for the treatment. In
28 instances where more than one person may have participated in the counseling, Plaintiff may not

1 be asked to state the names of such participants as the rights of privacy of third parties are in
2 issue.

3 D. The psychiatric examination will span approximately five to six hours,
4 excluding breaks. During the examination, Plaintiff may take appropriate breaks for personal
5 comfort, meals, and other necessities.

6 E. The examination will consist of an interview and a mental status
7 examination that will take no more than three hours, and the following psychological testing and
8 screening cognitive assessment: (1) the MMPI-2-RF, (2) Personality Assessment Inventory (PAI),
9 (3) Trauma Symptom Inventory – 2 (TSI-2), and (4) Mini Mental State Examination – 2 (MMSE-
10 2).

11 F. Dr. Rosenberg will audio record the entire psychiatric evaluation. A copy
12 of the audio recording will be provided to Plaintiff's counsel within 5 days of the examination.
13 Plaintiff may also audio record the examination, but no one else may be present in the room
14 during the evaluation. The examination shall not be videotaped.

15 G. The psychiatric evaluation will not involve any physical examination.
16 There will be no blood tests or other intrusive medical studies or procedures.

17 H. Plaintiff shall not be required to fill out any patient information forms of
18 any type whatsoever, including, but not limited to, "new patient" forms, insurance forms
19 identification forms authorizations for records, arbitration forms, waivers and releases and will
20 not be asked to do so by Dr. Rosenberg or his staff.

21 I. Dr. Rosenberg will not take any photographs, video recording, finger prints
22 or other identification information from Plaintiff, including, but not limited to driver's license,
23 social security number and home address.

24 J. The examination will be conducted at Spring Hill Suites by Marriott, 113
25 E. Sydnor Avenue, Ridgecrest, California 93555.

26 K. A copy of this Order will be given to Dr. Rosenberg prior to the
27 examination.
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1 L. Dr. Rosenberg may be provided by defense counsel with Plaintiff's
2 personnel file, leave of absence file, deposition testimony, discovery responses, and Complaint
3 produced during the course of discovery in this case, which he may review prior and/or
4 subsequent to examination of Plaintiff. Defense counsel will provide Dr. Rosenberg Plaintiff's
5 medical and mental health records that they have received in response to subpoenas for the
6 records. Dr. Rosenberg shall not provide or disclose any of the documents he is provided in
7 connection with this case to any third parties. Dr. Rosenberg will destroy Plaintiff's medical and
8 mental health records upon completion of this case. He will maintain a copy of his examination
9 file including his notes, psychological testing, audio recording, and report.

10 M. After the examination of Plaintiff, Dr. Rosenberg will prepare a written
11 report of his findings in conformance with F.R.C.P. Rule 35. A copy of said report will be
12 provided to Plaintiff's counsel within five days of completion.

13 N. The results and scores of the psychological testing of Plaintiffs will be
14 provided to Plaintiff's counsel within five days of the examination, and they will be kept
15 confidential and used for purposes of this litigation only.

16
17 IT IS SO ORDERED.

18 Dated: October 24, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE