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 9 FACULTATIEVE TECHNOLOGIES
 10 THE AMERICAS, INC. and INCINERATOR
 11 SPECIALISTS, INC.

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

14 **JONATHAN SALAS,**
 15 **Plaintiff,**
 16 **v.**

17 **FACULTATIEVE TECHNOLOGIES**
 18 **THE AMERICAS, INC., ET AL.,**
 19 **Defendants.**

No. 1:17-CV-00335-LJO-BAM

**STIPULATION AND ORDER RE:
 PHYSICAL EXAMINATION OF
 PLAINTIFF JONATHAN SALAS**

20 IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES, BY AND
 21 THROUGH THEIR ATTORNEYS OF RECORD that Plaintiff Jonathan Salas shall submit to a
 22 physical examination with the following manner, conditions, and scope under Federal Rule of
 23 Civil Procedure 35:

24 **Manner, Conditions and Scope of Physical Examination**

- 25 1. The date and time for the physical examination will be August 19 at 9:00 a.m.
- 26 2. The physical examination will be performed by Peter Sfakianos, MD. Dr.
 27 Sfakianos is Board Certified in Orthopedic Surgery. Attached hereto as Exhibit "A" is a true and
 28 correct copy of Dr. Sfakianos' Curriculum Vitae setting forth his qualifications and background.
3. The location of the examination will be El Dorado Orthopedics, 1580 Creekside
 Drive, Suite 100, Folsom, CA 95630.
4. The manner, condition, scope and nature of the physical examination will be a

1 three-part exam consisting of:

2 a. An interview in the doctor's office which will include, but is not limited to,
3 the history of the event, treatment, prior medical history and present symptoms;

4 b. A physical examination involving:

5 1. Right Upper extremity range of motion, neurologic exam &
6 measurements;

7 2. Provocative no painful, noninvasive testing or plaintiff's right
8 hand/right upper extremity;

9 3. Specific orthopedic exam of Mr. Salas based on examinee's
10 underlying complaints of his right hand/right upper extremity.

11 5. The examination will not include any diagnostic test or procedure that is painful,
12 protracted or intrusive.

13 6. It is further stipulated that the examination will be videotaped. Defendants reserve
14 the right to use said videotape at trial.

15 7. It is further stipulated that, following the examination, a copy of Dr. Sfakianos'
16 report related to the examination will be produced to Mr. Salas' counsel as required by Federal
17 Rule of Civil Procedure 35. Dr. Sfakianos' report shall be in writing and must set out in detail his
18 examiner's findings, including diagnoses, conclusions, and the results of any tests. After delivering
19 Dr. Sfakianos' report, defendants may request—and are entitled to receive—from Mr. Salas, like
20 reports of all earlier or later examinations of the same condition. By requesting and obtaining Dr.
21 Sfakianos' report, or by deposing Dr. Sfakianos, Mr. Salas waives any privilege he may have—in
22 that action or any other action involving the same controversy—concerning testimony about all
23 examinations of the same condition. The court on motion may order—on just terms—that a party
24 deliver the report of an examination. If the report is not provided, the court may exclude the
25 examiner's testimony at trial.

26 8. It is further stipulated that defendants will be responsible for the fees associated
27 with this examination, including Dr. Sfakianos' cancellation policy, unless plaintiff cancels said
28 examination on or after August 14, 2019. Should Mr. Salas be unable to comply with Dr.

1 Sfakianos' cancellation policy for any unexpected health reason, Mr. Salas reserves the right to
2 object to the payment of Dr. Sfakianos' cancellation costs incurred. Defendants reserve the right
3 to seek payment for any cancellation by Mr. Salas. In this situation, Mr. Salas and defendants
4 agree to work together to promptly reschedule the examination and reasonably resolve any issues
5 regarding the payment of Dr. Sfakianos' cancellation costs incurred.

6 The parties agree that this Stipulation may be signed in counterpart, and each counterpart
7 shall be deemed an original, and all counterparts so executed shall constitute one Stipulation, and
8 further, that faxed or emailed signatures shall be treated as originals.

9 **IT IS SO STIPULATED**

10 **MASTAGNI HOLSTEDT, A.P.C.**

11
12 DATED: 8/7/2019

13 By: _____/s/_____
14 GRANT A. WINTER
15 Attorney for Plaintiff

16 **ERICKSEN ARBUTHNOT**

17 DATED: 8/7/2019

18 By: _____/s/_____
19 NATHANIEL R. LUCEY
20 Attorney for Defendants Facultatieve
21 Technologies The Americas, Inc. and
22 Incinerator Specialists, Inc.

23 **ORDER**

24 Having reviewed the Stipulation set forth above, and FOR GOOD CAUSE APPEARING
25 THEREFORE, the above Stipulation is accepted, adopted and made the Order of the Court.
26 IT IS SO ORDERED.

27 Dated: August 8, 2019

28 /s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE