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SAN JOAQUIN DELTA COMMUNITY
7 COLLEGE DISTRICT

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

10 **SHIRLEY A. NEWMAN AND ANTHONY) No. 2:09-CV-03441-WBS-KJN**
C. BUTLER,)
11 **Plaintiffs,)**
12 **vs.) STIPULATION RE: PHYSICAL**
) EXAMINATION OF SHIRLEY A.
13 **) NEWMAN; ~~PROPOSED~~ ORDER**
) [FRCP 35]
14 **SAN JOAQUIN DELTA COMMUNITY)**
COLLEGE DISTRICT AND DOES 1)
15 **THROUGH 15, INCLUSIVE,)**
16 **Defendants.)**

17 The parties to the above-entitled action, by and between their respective attorneys of
18 record, hereby stipulate as follows:

19 1. On December 13, 2010, defendant SAN JOAQUIN DELTA COMMUNITY
20 COLLEGE DISTRICT (DISTRICT) filed a Motion To Compel Independent Physical
21 Examination of Plaintiff Shirley A. Newman and supporting documents (Motion To Compel).
22 The hearing on the Motion To Compel is currently set for January 20, 2011, at 10:00 a.m., in
23 Courtroom 25 of the above-entitled court.

24 2. Counsel for DISTRICT and NEWMAN have met and conferred on multiple
25 occasions before and after the filing of the Motion To Compel by telephone, electronic mail, and
26 regular mail regarding the terms and conditions of a physical examination to be performed on
27 NEWMAN pursuant to FRCP 35.

28 3. NEWMAN represents the following are her physical injuries caused by the

1 tortious conduct of defendants, and no others: aggravation of a pre-existing herniation in her
2 low back and the consequences thereof, as described in her answers to form interrogatories 6.1.,
3 6.2, and 6.3 served January 8, 2009; injury to her left shoulder and consequences thereof, as
4 described in her answers to form interrogatories 6.1., 6.2, and 6.3 served January 8, 2009; gash
5 in her left shin, and consequences thereof, as described in her answers to form interrogatories
6 6.1., 6.2, and 6.3 served January 8, 2009.

7 3. A physical examination shall be performed on NEWMAN under the following
8 terms and conditions:

9 a. The examiner shall be Craig N. Pfeiffer, M.D.

10 b. The place of the examination shall be 6555 Coyle Ave., Suite 235, Carmichael,
11 California.

12 c. The date of the examination shall be February 2, 2011.

13 d. The examination will commence at 10:00 a.m., or at a reasonable time thereafter,
14 but not after 10:30 a.m.

15 e. DISTRICT and NEWMAN shall use best efforts to inform the other of any
16 changes in the date, time, or place of the examination made necessary by unforeseen events.

17 f. NEWMAN shall be responsible for transporting herself to and from the
18 examination, shall submit to the examination, and cooperate reasonably with the examiner.

19 g. The examination shall not exceed three (3) hours in duration.

20 h. The examination shall be limited to the body parts described in paragraph 2
21 above and related structures.

22 i. NEWMAN shall not complete any writings in connection with the examination.

23 j. No history shall be taken from NEWMAN of the incident of March 13, 2008.

24 k. A history may be taken of post-incident symptoms and treatment, and pre-
25 incident symptoms and treatment of the parts of NEWMAN's body identified in paragraph 2
26 hereof.

27 l. The entire examination shall be recorded by a certified videographer at the
28 expense of DISTRICT; a copy of the DVD bearing the videotape of the examination shall be

1 provided to NEWMAN at no expense to her.

2 m. At her option, NEWMAN may have one other person of her choosing present for
3 the examination, whose powers and obligations shall be as set forth in CCP Sections
4 2032.510(a) through (e).

5 n. No laboratory or radiographic tests will be performed on NEWMAN without her
6 prior written consent upon at least 5 days notice to her counsel.

7 o. The physical clinical examination shall consist of the following:

- 8 (1) To the extent the patient is able to ambulate, assessment of gait, including heel
9 and toe walking.
- 10 (2) Palpation of the lumbar area for tenderness and/or spasm.
- 11 (3) Active range of motion of low back, including flexion, extension, right and left
12 side bending.
- 13 (4) Straight leg raising.
- 14 (5) Active range of motion of the hip joints including flexion, abduction, and internal
15 rotation.
- 16 (6) Assessment of lower extremity strength, sensation, and reflexes.
- 17 (7) Assessment of left shoulder active range of motion, strength, sensation, and
18 reflexes.

19 4. Dr. Pfeiffer shall issue a written report regarding the examination, the production
20 and delivery of which shall be governed by FRCP 35(b).

21 5. No other physical examination shall be performed on NEWMAN by any
22 defendant except by stipulation signed by all parties to the action or by court order upon good
23 cause shown. Such good cause, by way of example and not limitation, may be present if Dr.
24 Pfeiffer dies, becomes disabled, or becomes unavailable as a trial witness.

25 6. Upon execution of this Stipulation and issuance of the Order set forth below,
26 DISTRICT shall withdraw its Motion To Compel, and all parties hereby waive any claim to
27 sanctions related to this matter through the time of this stipulation; provided, however, that such
28 withdrawal shall be without prejudice to any defendant's right to file a motion to compel a

1 physical examination of NEWMAN in the event she violates one or more terms of this
2 Stipulation or the court's Order thereon.

3 SO STIPULATED:
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5 DATED: 1/11/11 **LAW OFFICES OF KENNETH N. MELEYCO**

6 By /s/ Kenneth N. Meleyco
7 KENNETH N. MELEYCO, Attorney for Plaintiffs

8 DATED: 1/11/11 **RYALS & BREED, P.C.**

9 By /s/ Stephen M. Ryals
10 STEPHEN M. RYALS, Attorney for Plaintiffs

11 DATED: 1/11/11 **MAYALL, HURLEY, KNUTSEN, SMITH & GREEN**

12 By /s/ J. Anthony Abbott
13 J. ANTHONY ABBOTT, Attorney for Defendant
14 SAN JOAQUIN DELTA COMMUNITY COLLEGE DISTRICT

15 DATED: 1/11/11 **MASTAGNI, HOLSTEDT, AMICK, MILLER & JOHNSEN**

16 By /s/ James B. Carr
17 JAMES B. CARR, Attorney for Defendant JAMES WOOD

18 DATED: 1/11/11 **THE LAW OFFICE OF MICHAEL MATTEUCCI**

19 By /s/ Michael J. Matteucci
20 MICHAEL J. MATTEUCCI, Attorney for Defendant DANIELE
21 RULEY

22 **ORDER**

23 IT IS SO ORDERED.

24 DATED: January 11, 2011

/s/ Kendall J. Newman
25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE
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