

1 CHARLES D. MAY, ESQ.; STATE BAR NO.: 129663
2 GENE B. SHARAGA, ESQ.; STATE BAR NO.: 131661
3 DIANA M. RIVERA, ESQ.; STATE BAR NO.: 222025

4 **THARPE & HOWELL, LLP**
5 **15250 Ventura Blvd., Ninth Floor**
6 **Sherman Oaks, California 91403**
7 **(818) 205-9955; (818) 205-9944 fax**
8 **E-Mail: cmay@tharpe-howell.com**
9 **E-Mail: gsharaga@tharpe-howell.com**
10 **E-Mail: drivera@tharpe-howell.com**

11 Attorneys for Defendants,
12 LOWE'S HOME CENTERS, LLC

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION

15 TONIA NELSON, KRISTOPHER
16 PALLESEN, BRYAN GARCIA and
17 NICKOLAS NELSON,

18 Plaintiffs,

19 vs.

20 LOWE'S HOME CENTERS, INC., and
21 DOES 1 through 50, inclusive,

22 Defendants.

No. 2:15-cv-00092-KJM-KJN (TEMP)

**STIPULATION TO TAKING PSYCHIATRIC
INDEPENDENT MENTAL EXAMINATION
OF PLAINTIFF TONIA NELSON AND
ORDER**

23 WHEREAS, Plaintiff TONIA NELSON, ("Plaintiff") has alleged a claim that as a result of
24 the subject incident she suffers from: traumatic brain injury, depression, difficulty sleeping,
25 anxiety, frustration, confusion, memory loss, and emotional distress, among other things.

26 WHEREAS, Defendant LOWE'S HOME CENTERS, LLC ("Defendant") has the right to
27 conduct a psychiatric examination of Plaintiff pursuant to Federal Rules of Civil Procedure Rule
28 35;

WHEREAS, Defendant has retained a licensed psychiatrist, for the purposes of performing
a psychiatric examination;

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
captioned matter through their respective counsel for record as follows:

////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. A Psychiatric Independent Mental Examination of Plaintiff TONIA NELSON will be conducted pursuant to Federal Rules of Civil Procedure Rule 35 at a date, time, and location mutually convenient for both parties before the expert witness discovery deadline of April 22, 2016. The examination will be taken by Board certified psychiatrist Ronald C. Albucher, M.D. A true and correct copy of Dr. Albucher’s Curriculum Vitae is attached hereto and incorporated herein by reference as Exhibit A.

2. At the above-referenced examination, Plaintiff will be asked questions concerning relevant background information, medical history including psychological and psychiatric treatment history, educational history, and alcohol and drug use history. The examination shall include the following areas, which Plaintiff has put at issue in this lawsuit: traumatic brain injury, depression, difficulty sleeping, anxiety, frustration, confusion, memory loss, and emotional distress, among other things.

3. The total length of the examination may take up to 3 hours, not including any reasonable and appropriate breaks Plaintiff may take as needed. The examination is not to exceed 3 hours.

4. The parties stipulate that Plaintiff shall be subjected to only one psychiatric examination by Defendant(s) in connection with this action, whether in Federal or State Court, regardless of whether Defendant(s) retain any additional experts.

5. Given the nature of the examination, Plaintiff may not have her counsel or representative observe the examination or videotape it.

6. Within thirty (30) days of the examination, Defendant’s counsel will produce Dr. Albucher’s report from the examination to Plaintiff’s counsel.

7. At the time of compliance to Plaintiff’s demand for a copy of Dr. Albucher’s report, Plaintiff shall in exchange produce to Defendant’s counsel a copy of any existing report of any examination of the same condition by any other physician, psychologist, or licensed health care

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

practitioner. In addition, Plaintiff shall provide any later report of any previous or subsequent examination of the same condition, by any physician, psychologist, or licensed health care practitioner, as provided by Federal Rules of Civil Procedure Rule 35.

8. This Stipulation will replace Defendant’s Motion to Compel Psychiatric Independent Mental Examination and will be filed in place of the Joint Statement Re: Defendant’s Motion to Compel Psychiatric Independent Mental Examination.

9. Attached hereto and incorporated herein by reference as Exhibit B is a Proposed Order for the completion of the agreed to Psychiatric Independent Mental Examination.

10. This stipulation may be executed in counterparts. Facsimile or electronic signatures shall have the same effect as originals.

IT IS SO STIPULATED.

Dated: March 17, 2016

THARPE & HOWELL, LLP

/s/Diana M. Rivera

By: _____

CHARLES D. MAY
GENE B. SHARAGA
DIANA M. RIVERA
Attorneys for Defendants
LOWE’S HOME CENTERS, LLC

Dated: March 17, 2016

BOSTWICK & PETERSON, LLP

/s/Blake Bostwick

By: _____

ERIK PETERSON
BLAKE BOSTWICK
Attorney for Plaintiffs
TONIA NELSON, KRISTOPHER
PALLESEN, BRYAN GARCIA and
NICKOLAS NELSON

ORDER

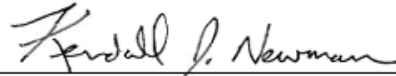
Pursuant to the parties' stipulation, IT IS HEREBY ORDERED THAT:

1. Plaintiff TONIA NELSON will appear for a psychiatric Independent Mental Examination with Lowe's retained psychiatric expert witness Ronald Albucher, M.D. at a date, time, and location mutually convenient for both parties before the expert witness discovery deadline of April 22, 2016;

2. Dr. Albucher will have 30 days from the date of the IME to prepare and serve his IME report on Plaintiffs' counsel per Fed. R. Civ. P. Rule 35; and

3. Defendant's March 3, 2016 motion to compel (Dkt. No. 16) is hereby withdrawn pursuant to the parties' stipulation and the March 24, 2016 hearing is vacated.

Dated: March 21, 2016



KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE