

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TINA BUSTILLOS,

No. C 08-3553 SI

Plaintiff,

**ORDER GRANTING DEFENDANT’S
MOTION TO COMPEL IME OF
PLAINTIFF**

v.

BIMBO BAKERIES USA INC.,


Defendant.

Defendant has moved to compel plaintiff to submit to an independent medical examination (“IME”) on July 7, 2009.¹ The parties dispute whether defendant’s request for an IME is timely because although fact discovery has closed, expert discovery is ongoing and the IME would be conducted by an expert. There is no dispute that plaintiff’s mental condition is in controversy.

As the parties acknowledge, there is scant authority on whether an IME is properly considered part of fact or expert discovery. The cases cited by the parties reach conflicting conclusions and contain little analysis. The Court finds that under these circumstances it was not unreasonable for defendant to assume that an IME would be part of expert discovery. The expert discovery cut-off is July 29, 2009, and plaintiff has not shown that she would be prejudiced by permitting the IME to go forward. Accordingly, the Court GRANTS defendant’s motion to compel the IME.

IT IS SO ORDERED.

Dated: July 1, 2009



SUSAN ILLSTON
United States District Judge

¹ The parties’ letter briefs are found at Docket Nos. 78 & 79.