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

JESUS CORTEZ,	)	Case No. 09-4138 SC
	)	
Plaintiff,	)	ORDER GRANTING MOTION TO
	)	COMPEL INDEPENDENT MEDICAL
v.	)	<u>EVALUATIONS OF JESUS CORTEZ</u>
	)	
GLOBAL GROUND SUPPORT, LLC; AIR T,	)	
INC.; DOES 1-10,	)	
	)	
Defendants.	)	
	)	

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**I. INTRODUCTION**

Defendants Global Ground Support, LLC, and Air T, Inc. (collectively, "Defendants") filed a motion to compel Plaintiff Jesus Cortez ("Plaintiff" or "Cortez") to submit to two independent medical examinations. ECF No. 33 ("Mot."). Cortez filed an Opposition, and Defendants submitted a Reply. ECF Nos. 42, 44. For the reasons stated herein, the Motion to Compel is GRANTED.

**II. BACKGROUND**

Defendants manufacture and sell aircraft ground support trucks and industrial specialty equipment. ECF No. 1 ("Notice of Removal") Ex. A ("Compl.") ¶ 10. Defendants designed and sold the CB 18-228, a scissor lift that allows its users to stand upon a platform that can be elevated for the purpose of loading personnel, equipment, and supplies into aircraft. Id. ¶ 11.

1 Cortez claims that on June 13, 2008, he was operating a CB 18-  
2 228 when it malfunctioned and dropped, crushing his foot and lower  
3 right leg. Id. ¶ 13. Cortez alleges that his injury was the  
4 direct result of several design defects. Id. ¶ 14. Cortez claims  
5 that Defendants were negligent in designing the lift, and that they  
6 are liable under the doctrine of strict liability. Id. ¶¶ 25-55.  
7 Cortez alleges that as a result of Defendants' negligent and  
8 wrongful conduct, he has suffered serious bodily injury, and he has  
9 "incurred significant special damages, including, but not limited  
10 to past and future wage loss, past and future medical expenses and  
11 costs of services." Id. ¶ 24.  
12

13 **III. LEGAL STANDARD**

14 "The court where the action is pending may order a party whose  
15 mental or physical condition . . . is in controversy to submit to a  
16 physical or mental examination by a suitably licensed or certified  
17 examiner." Fed. R. Civ. P. 35(a)(1). The movant must show "good  
18 cause" and "must specify the time, place, manner, conditions, and  
19 scope of the examination, as well as the person or persons who will  
20 perform it." Id. 35(a)(2).  
21

22 **IV. DISCUSSION**

23 **A. Medical Examination**

24 Defendants seek to compel Cortez to submit to a medical  
25 examination by Dr. Harry A. Khasigian ("Dr. Khasigian"). Mot. at  
26 4, Ex. B ("Curriculum Vitae of Dr. Khasigian"). According to  
27 Defendants, Plaintiff underwent a number of surgical procedures in  
28 the weeks following his accident, and his own physician indicated

1 that further surgical intervention was planned. Mot. at 5; Reply  
2 at 2-3. In his deposition, Cortez's treating orthopedic surgeon  
3 testified that he has not seen Cortez since June 2009, well over a  
4 year ago. Reply at 2-4.

5 The Court agrees with Defendants that they are entitled to  
6 have an orthopedic surgeon examine Cortez. "A plaintiff in a  
7 negligence action who asserts mental or physical injury . . .  
8 places that mental or physical injury clearly in controversy and  
9 provides the defendant with good cause for an examination to  
10 determine the existence and extent of such asserted injury."  
11 Schlagenhauf v. Holder, 379 U.S. 104, 119 (1964) (citation  
12 omitted).

13 In a negligence case such as this one, it is only fair that  
14 Defendants' orthopedic surgeon should have the opportunity to  
15 evaluate the medical condition of Plaintiff's right leg and foot,  
16 especially since Plaintiff has not been examined in more than one  
17 year. Dr. Khasigian is permitted to conduct a medical examination  
18 of Plaintiff's right leg and foot. While neither Plaintiff's  
19 counsel nor Defendants' counsel can be present, a Tagalog  
20 interpreter -- mutually agreed to by the parties -- is permitted to  
21 attend. Dr. Khasigian should be allowed to conduct an orthopedic  
22 examination and ask such questions and undertake such non-invasive  
23 tests as he deems necessary to evaluate the past, present, and  
24 future medical condition of Cortez's right leg and foot.

25 **B. Vocational Rehabilitation Examination**

26 Defendants seek to compel Cortez to submit to a vocational  
27 rehabilitation examination based on Cortez's allegations of future  
28 wage loss. Mot. at 4-5. Defendants seek to have Cortez examined

1 by Gregory W. Sells ("Mr. Sells"), a vocational rehabilitation  
2 counselor. Mot. at 4, Ex. B ("Curriculum Vitae of Mr. Sells").  
3 Cortez has already submitted to one vocational rehabilitation  
4 examination. Opp'n at 1. As Plaintiff has submitted to this  
5 examination to support his case, the Court finds good cause for a  
6 similar examination by Defendants' chosen counselor. A Tagalog  
7 interpreter -- mutually agreed to by the parties -- is permitted to  
8 attend. Mr. Sells is permitted to perform a standard vocational  
9 rehabilitation examination.

10 **C. Discovery Deadlines**

11 Defendants have scheduled the medical examination for October  
12 12, 2010, at Dr. Khasigian's office in Sacramento, and the  
13 vocational rehabilitation evaluation is scheduled for October 19,  
14 2010, at Mr. Sells' office in Sacramento.<sup>1</sup> See Mot. at 4. The  
15 Court encourages the parties to arrange for the examinations to  
16 occur earlier, but the examinations should not occur later than  
17 October 19, 2010. November 19, 2010 remains the cutoff date for  
18 all discovery in this case.

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27 <sup>1</sup> The Court presumes that Cortez resides in or near Sacramento,  
28 California. If this presumption is not correct, then counsel for  
the parties should meet and confer to arrange for the examinations  
to occur at a time and location that is not burdensome for  
Plaintiff.

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V. CONCLUSION

For the foregoing reasons, the Court GRANTS the Motion to Compel Independent Medical Evaluations of Jesus Cortez filed by Defendants Global Ground Support, LLC, and Air T, Inc.

IT IS SO ORDERED.

Dated: September 13, 2010

  
UNITED STATES DISTRICT JUDGE