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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BRIAN SCOTT GUIDRY, et al.,

Plaintiffs,

v.

GOLDEN GATE NATIONAL PARKS
CONSERVANCY, et al.,

Defendants.

Case No. [12-cv-05639-JSC](#)

**ORDER RE: RULE 35 MENTAL
EXAMINATION**

Re: Dkt. No. 131

Plaintiffs Brian Scott Guidry and Peggy Kuykendall bring this action against Defendants Golden Gate National Parks Conservancy and Alcatraz Cruises, LLC, for injuries the Plaintiffs suffered while riding a tram on Alcatraz Island. Now pending before the Court is the parties' joint statement to resolve a discovery dispute regarding whether the Court should compel Guidry to submit to a psychiatric evaluation, as Defendants request. (Dkt. Nos. 131, 132.) Plaintiffs assert that any such evaluation is unreasonably duplicative and harassing given that Guidry has already undergone a separate evaluation by a neuropsychologist who looked into Guidry's emotional state. (Dkt. No. 131 at 5.) After carefully considering the parties' submissions, and having had the benefit of oral argument on December 4, 2014, the Court GRANTS Defendants' request and compels Guidry to undergo a four-hour psychiatric evaluation.

Federal Rule of Civil Procedure 35(a) gives a court authority to order one party to comply with the other's legitimate discovery request to submit to a mental examination by a licensed examiner. Fed. R. Civ. P. 35(a). The party requesting the mental examination must demonstrate that (1) the physical or mental condition of the party is "in controversy" and (2) "good cause" for the examination exists. *Ragge v. MCA/Universal Studios*, 165 F.R.D. 605, 608 (C.D. Cal. 1995).¹

¹ Plaintiff cites cases from California state court and implies that the Court should apply California law given that only state law claims remain. (See Dkt. No. 131 at 7.) However, "[i]t is axiomatic

1 “A mental condition is ‘in controversy’ when it is itself the subject of the litigation.” *Gavin v.*
2 *Hilton Worldwide, Inc.*, 291 F.R.D. 161, 164 (N.D. Cal. Apr. 5, 2013). “‘Good cause’ for a
3 mental examination requires a showing that the examination could adduce specific facts relevant
4 to the cause of action and necessary to the defendant’s case.” *Ragge*, 165 F.R.D. at 609.

5 Rule 35 imposes no limit on the number of examinations, but “[e]ach request for an
6 independent medical examination must turn on its own facts, and the number of examinations to
7 which a party may be subjected depends solely upon the circumstances of the underlying request.”
8 *Alhozbur v. McHugh*, No. C09-01576 JW (HRL), 2010 WL 3504724, at *1 (N.D. Cal. Sept. 8,
9 2010) (quoting *Peters v. Nelson*, 153 F.R.D. 635, 637 (N.D. Iowa 1994)). When the plaintiff has
10 already undergone an initial examination and a party requests a subsequent examination, in
11 determining whether to order the second exam the court considers whether a significant period of
12 time has elapsed since the last evaluation and whether the subsequent examiner provides
13 additional expertise in a different but relevant discipline. See, e.g., *Edson v. Liberty Mut. Ins. Co.*,
14 No. C-01-3128 SBA (EMC), 2002 WL 31946902, at *2 (N.D. Cal. 2002). At bottom, it remains
15 “within the broad discretion of the district court to determine whether a party must submit to
16 examination.” *Lester v. Mineta*, No. C 04-03074, 2006 WL 3741949, at *1 (N.D. Cal. Dec. 19,
17 2006) (citation omitted).

18 Here, Plaintiffs concede that Guidry’s mental condition is “in controversy” for the
19 purposes of Rule 35. See *Tan v. City & Cnty. of San Francisco*, No. C 08-01564 MEJ, 2009 WL
20 594238, at *1 (N.D. Cal. Mar. 4, 2009) (noting that courts will order plaintiffs to undergo an
21 independent medical examination when the plaintiff concedes that her mental condition is in
22 controversy). Plaintiffs also have conceded that there is good cause for both a neuropsychological
23 and neurological evaluation; Dr. Howard Friedman already has conducted an eight hour
24 neuropsychological examination and produced a 20-page report (see Dkt. No. 132-1), and Guidry
25 apparently has consented to undergo a neurological examination to assess the physiological
26

27 that federal courts follow federal procedural law, regardless of the . . . substantive law at issue[.]”
28 and “discovery is a procedural matter governed by federal law.” *Balarezo v. Nth Connect*
Telecom, Inc., No. C 07-5243 JF (PVT), 2008 WL 2705095, at *1 n.3 (N.D. Cal. July 8, 2008).

1 impacts of his injury (see Dkt. No. 136 ¶ 1). Thus, this narrow dispute focuses only on whether a
2 psychiatric evaluation is necessary to evaluate Guidry’s emotional status, as Defendants contend.

3 From Defendants’ perspective, the psychiatric evaluation they currently seek is distinct
4 from the neuropsychology examination that Guidry already underwent and is necessary to
5 understand the nature and extent of Plaintiffs’ claims for damages. (Id. at 2.) In support of their
6 request, Defendants submit a declaration of Bernard S. Rappaport, M.D., the psychiatrist retained
7 to complete Guidry’s examination. (Dkt. No. 131-4.) According to Dr. Rappaport, while
8 neuropsychology focuses on “impairment to cognitive function, which involves empirical testing
9 of a patient’s behavioral tendencies and intellectual capabilities and limitations[,]” psychiatry
10 explores “changes to a brain injury patient’s emotional state as a result of the injury[,]” which
11 includes “examination of the patient’s emotional and psychiatric history, and present psychiatric
12 state, treatment, and prognosis[.]” (Dkt. No. 131-4 ¶ 4.) Dr. Rappaport avers that only a
13 psychiatrist can properly examine emotional and psychiatric issues, whereas a psychologist
14 reviews cognitive and behavioral problems, and that common practice in brain injury cases is to
15 have separate evaluations by experts in each field; thus, a psychiatrist is required to review
16 Guidry’s emotional state, and that such an evaluation not duplicate any testing that the
17 neuropsychologist already completed. (Id. ¶ 5.) Based on Dr. Rappaport’s declaration,
18 Defendants contend that there is good cause to order a psychiatric evaluation. (Dkt. No. 131 at 3-
19 4.)

20 Plaintiffs, for their part, assert that there is no good cause for a psychiatric evaluation
21 because the neuropsychologist already assessed Guidry’s emotional status. (Dkt. No. 131 at 5;
22 Dkt. No. 136 at 136.) In support of their opposition to Defendants’ request, Plaintiffs submit the
23 declaration of psychiatrist Zachary D. Torry, M.D., who opines that any psychiatric evaluation
24 would be duplicative of Dr. Friedman’s completed neuropsychological examination. (Dkt. No.
25 136 at 3-5.) From Dr. Torry’s perspective, the mental anguish that Guidry likely will endure if
26 forced to undergo another evaluation far outweighs its limited, duplicative value. (Id. ¶¶ 3-4.)
27 Plaintiffs also expressed concern about Guidry taking more time off from work for the additional
28 examination.

1 Courts in this District regularly find good cause to order plaintiffs seeking damages for
2 brain injuries to undergo all three types of examinations—neuropsychological, neurological, and
3 psychiatric—given the differences between the three fields. See, e.g., *Nicholas v. United Air*
4 *Lines, Inc.*, No. C09-02089 RS (HRL), 2010 WL 1759459, at *1-2 (N.D. Cal. Apr. 29, 2010); *Ayat*
5 *v. Societe Air France*, No. C 06-1574 JSW (JL), 2007 WL 1120358, at *6-7 (N.D. Cal. Apr. 16,
6 2007); *Lester*, 2006 WL 3741949, at *2. So it is here: based on the nature of Guidry’s claims,
7 which allege brain injury resulting in physical pain and emotional distress as a result of
8 Defendants’ negligence, the Court concludes that Defendants are entitled to compel Guidry to
9 undergo a psychiatric examination separate and apart from evaluations in neuropsychology and
10 neurology. The Court agrees with Defendants that neuropsychology and psychiatry are different
11 disciplines that assess different problems. Thus, although Dr. Friedman’s neuropsychological
12 report touched on Guidry’s emotional condition in the context of his neuropsychological
13 evaluation—indeed, its very purpose was “to determine current cognitive and emotional
14 functioning” regarding Guidry’s claim of injury (Dkt. No. 132-1 at 2)—it did so from the
15 perspective of a neuropsychologist looking into Guidry’s cognitive state, not a psychiatrist
16 assessing mental illness and medications treating such conditions. As a result, a separate
17 psychiatric examination is appropriate. Finally, Plaintiff’s argument that a psychiatric
18 examination is unwarranted given the “mental anguish” that further evaluation is likely to cause
19 Guidry is unavailing; given the scope of damages that Plaintiffs seek—up to five million dollars—
20 an additional four hours of examination is reasonable.

21 For all of these reasons, the Court GRANTS Defendants’ request to compel Guidry to
22 undergo a four-hour independent medical examination by a psychiatrist. As stated on the record at
23 the hearing, the Court directs Defendants to work with Plaintiffs to set the psychiatric examination
24 at a time least inconvenient to Guidry’s work schedule.

25 **IT IS SO ORDERED.**

26 Dated: December 4, 2014

27 
28 JACQUELINE SCOTT CORLEY
United States Magistrate Judge