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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 JOE JW ROBERTS, JR.,

11 Plaintiff,

12 v.

13 VILMA KHOUNPHIXAY, et al.,

14 Defendants.

CASE NO. C18-746 MJP

ORDER GRANTING MOTION FOR  
INDEPENDENT MENTAL  
EXAMINATION

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16 This matter comes before the Court on Defendants' Rule 35 Motion for an Independent  
17 Mental Examination. (Dkt. No. 109.) Having read the Motion, the Response (Dkt. No. 113), the  
18 Reply (Dkt. No. 116), and having reviewed all related papers, the Court GRANTS Defendants'  
19 Motion.

20 Federal Rule 35(a)(1) provides that the Court "may order a party whose mental or  
21 physical condition . . . is in controversy to submit to a physical or mental examination by a  
22 suitably licensed or certified examiner." In Schlagenhauf v. Holder, the U.S. Supreme Court held  
23 that, where the opposing party places the condition of the person to be examined in controversy,  
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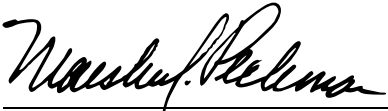
1 the moving party must make “an affirmative showing . . . that each condition as to which the  
2 examination is sought is really and genuinely in controversy and that good cause exists for  
3 ordering each particular examination.” 379 U.S. 104, 119 (1964). Reliance on conclusory  
4 allegations in the pleadings or a showing of mere relevance to the case is insufficient. See Davis  
5 v. City of Ellensburg, 651 F. Supp. 1248, 1258 (E.D. Wash. 1987).

6 Plaintiff’s First Amended Complaint alleges that because Defendants did not adequately  
7 asses the risk caused by Plaintiff’s mental illness, failing to keep him safe. (See, e.g., id.,  
8 ¶¶ 66-67, 78-81.) Plaintiff’s mental health is therefore “in controversy,” and understanding the  
9 extent of his mental health issues is vital to Defendants’ case. Additionally, good cause exists  
10 for ordering an examination because there is no clear way for the moving party to obtain the  
11 information by other means. See Schlagenhauf, 379 U.S. at 118.

12 The Court therefore GRANTS Defendants’ motion to compel a mental examination  
13 under Federal Rule 35. The Parties are to confer on the time, place and location of the exam.  
14 Plaintiff’s counsel may be present or have an investigator or other representative present but may  
15 not comment on or participate in the medical exam itself. Plaintiff’s counsel may also record the  
16 examination or participate via video conferencing.

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18 The clerk is ordered to provide copies of this order to all counsel.

19 Dated May 5, 2020.

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22 Marsha J. Pechman  
23 Senior United States District Judge  
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