

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

YORDONIS ABREU OCAMPO, and
YAIMEL TOLEDO TORRIENTE,

Plaintiffs,

v.

Case No. 8:22-cv-2424-MSS-CPT

UNITED STATES OF AMERICA,

Defendant.

_____ /

ORDER

Before the Court is the United States' *Motion for Rule 35 Examinations of Plaintiffs by Government's Retained Orthopedic Surgeon*. (Doc. 30). For the reasons set forth on the record at the December 7, 2023, hearing on the matter, the government's motion is granted. Given the circumstances presented, the assessment of Plaintiffs Yordonis Abreu Ocampo (Abreu Ocampo) and Yaimel Toledo Torriente (Toledo Torriente) shall proceed according to the below terms and conditions:¹

1. The conditions for the Rule 35 examination of Mr. Abreu Ocampo are as follows:

¹ These terms and conditions are the same as those set forth by the parties in accordance with the Court's directive (Doc. 41), except for some minor non-substantive changes made by the Court.

- a. The examination of Mr. Abreu Ocampo will take place on December 21, 2023.
- b. The examination will begin at 9:00 a.m.
- c. The examination will be conducted by the Defendant's retained medical expert, orthopedic surgeon Dr. José Humberto Jiménez-Almonte.
- d. The examination will be conducted in the conference room of Veritext - Tampa (Riesdorph), 201 E. Kennedy Boulevard, Suite 712, Tampa, Florida 33602.
- e. The scope of the examination will include a non-invasive orthopedic medical examination and interview pertaining to Mr. Abreu Ocampo's alleged injuries.
- f. The examination will be conducted at the Defendant's expense.
- g. Dr. Jiménez will conduct the examination in English.
- h. A court-certified interpreter and a court reporter will be provided at the Defendant's expense to facilitate language translations for Mr. Abreu Ocampo, whose primary language is Spanish, and to provide a record of the same.
- i. The examination must begin at the designated time, or the appointment will be rescheduled, and Mr. Abreu Ocampo will be charged the venue's \$80.00 no-show fee, as well as Dr. Jiménez's fees

for his time and the fees of the court-certified interpreter and court reporter.

- j. If the examination is cancelled with less than two business days' notice, Mr. Abreu Ocampo will also be charged the venue's \$80.00 no-show fee, as well as any applicable cancellation fees of Dr. Jiménez, the court reporter, and the interpreter.
- k. Dr. Jiménez will obtain information from Mr. Abreu Ocampo that is reasonably necessary to conduct his medical evaluation, including a brief medical history and any present complaints. The examination will be restricted to the specific medical conditions in controversy.
- l. Dr. Jiménez will inquire regarding Mr. Abreu Ocampo's present medical complaints, the mechanism of his injuries, and any similar prior or subsequent similar injuries.
- m. Defense counsel will provide Dr. Jiménez with all medical records, imaging studies, test results, and the like, which the defense wishes Dr. Jiménez to review and rely upon as part of his examination.
- n. Mr. Abreu Ocampo is required to bring valid identification to his examination (e.g., a driver's license, official state identification card, or government-issued passport).
- o. All protected health information generated or obtained by Dr. Jiménez will be kept and maintained in accordance with HIPAA

requirements and will not be disseminated for purposes outside the instant litigation without a specific order from the Court.

- p. There shall be no videographer or recording device at the examination. Nor may any other witnesses or third parties, including an attorney, friend, spouse, or representative of any party, be present at the examination. The interpreter and court reporter referenced above are the only exceptions to this condition.
- q. Pursuant to Rule 35(b)(1), upon request, Dr. Jiménez will produce a written report after the examination that conforms to the provisions of Rule 35(b)

2. The conditions for the Rule 35 examination of Mr. Toledo Torriente are as follows:

- a. The examination of Mr. Toledo Torriente will take place on December 29, 2023.
- b. The examination will begin at 4:00 p.m.
- c. The examination will be conducted by the Defendant's retained medical expert, physiatrist Dr. Jonathan Waldbaum.
- d. The examination will be conducted in the conference room of Veritext - Tampa (Riesdorph), 201 E. Kennedy Boulevard, Suite 712, Tampa, Florida 33602.

- e. The scope of the examination will include a non-invasive physical medical examination and interview pertaining to Mr. Toledo Torriente's alleged injuries.
- f. The examination will be conducted at the Defendant's expense.
- g. Dr. Waldbaum will conduct the examination in English.
- h. A court-certified interpreter and a court reporter will be provided at the Defendant's expense to facilitate language translations for Mr. Toledo Torriente, whose primary language is Spanish, and to provide a record of the same.
- i. The examination must begin at the designated time, or the appointment will be rescheduled, and Mr. Toledo Torriente will be charged the venue's \$80.00 no-show fee, as well as Dr. Waldbaum's fees for his time and the fees of the court-certified interpreter and court reporter.
- j. If the examination is cancelled with less than two business days' notice, Mr. Toledo Torriente will also be charged the venue's \$80.00 no-show fee, as well as any applicable cancellation fees of Dr. Waldbaum, the court reporter, and the interpreter.
- k. Dr. Waldbaum will obtain information from Mr. Toledo Torriente that is reasonably necessary to conduct his medical evaluation, including a brief medical history and any present complaints. The

examination will be restricted to the specific medical conditions in controversy.

1. Dr. Waldbaum will inquire regarding Mr. Toledo Torriente's present medical complaints, the mechanism of his injuries, and any similar prior or subsequent similar injuries.
- m. Defense counsel will provide Dr. Waldbaum with all medical records, imaging studies, test results, and the like, which the defense wishes Dr. Waldbaum to review and to rely upon as part of his examination.
- n. Mr. Toledo Torriente is required to bring valid identification to his examination (e.g., a driver's license, official state identification card, or government-issued passport).
- o. All protected health information generated or obtained by Dr. Waldbaum will be kept and maintained in accordance with HIPAA requirements and will not be disseminated for purposes outside the instant litigation without a specific order from the Court.
- p. There shall be no videographer or recording device at the examination. Nor may any other witnesses or third parties, including an attorney, friend, spouse, or representative of any party, be present at the examination. The interpreter and court reporter referenced above are the only exceptions to this condition.

- q. Pursuant to Rule 35(b)(1), upon request, Dr. Waldbaum will produce a written report after the examination that conforms to the provisions of Rule 35(b).

SO ORDERED in Tampa, Florida, this 13th day of December 2023.



HONORABLE CHRISTOPHER P. TUIE
United States Magistrate Judge

Copies to:
Counsel of record