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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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CLERK OF COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

and

SHERI CALVO, VERONICA FERREK and
MELISSA SCARBOROUGH,

Intervenor-Plaintiffs,

v.

Case No. 8:99-CV-1371-T-17MAP

RIO BRAVO INTERNATIONAL, INC. and
INNOVATIVE RESTAURANT CONCEPTS,
INC., and APPLEBEE'S INTERNATIONAL,
INC. d/b/a RIO BRAVO CANTINA,

Defendants.

_____ /

ORDER

In an order dated October 31, 2000 (*see* doc. 97), this Court denied the Defendants' motions to require the Plaintiffs Calvo, Ferek, and Scarborough to submit to mental examinations. In short, the Defendants had not made the showing demanded by FED. R. CIV. P. 35. *See Schlagenhauf v. Holder*, 379 U.S. 104 (1964). Since these events, however, each Plaintiff has notified the Defendants she is seeking *at least* \$1,000,000 in non-economic damages. Consequently, the Defendants have renewed their request for mental examinations and propose that a forensic psychologist and a forensic psychiatrist evaluate each Plaintiff (doc. 219). The Plaintiffs Calvo, Ferek, and Scarborough object (doc. 222); so does the EEOC (doc. 223). After consideration, I find the Defendants have

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presented new information not available at the time of the original request for mental examinations. I also find the Defendants have made the necessary showing under Rule 35; accordingly, the Defendants' motion is granted.¹

Rule 35 requires a defendant to show the plaintiff's mental or physical condition is "in controversy" and "good cause" exists for ordering the tests. *Schlagenhauf, supra*. In summary, the Plaintiffs contend nothing has really changed since the Court denied the Defendants' first Rule 35 motions. For example, they emphasize, like before, they will not offer expert testimony at trial to support their demand for non-economic damages. Moreover, they argue the significant amounts they claim here, amounts they revealed only after the Court denied the Defendants' first motion, do not put their mental states "in controversy." This Court disagrees. The substantial non-economic damages the Plaintiffs ask for alters the landscape. Just because the Plaintiffs do not intend to offer experts to support their non-economic damages does not mean they have not placed their mental state at issue. *See Ali v. Wang Laboratories, Inc.*, 162 F.R.D. 165, 167-68 (M.D. Fla. 1995) ("While plaintiff [who seeks substantial damages for his alleged emotional injuries] may be content to offer only his own testimony to a jury, defendant is not compelled to limit its case to mere cross examination). The Defendants should have a reasonable opportunity to challenge each Plaintiff's claim for non-economic damages. *Id.* Therefore, it is

¹ Generally, courts have cited the following reasons when reconsidering prior rulings: (1) the controlling law has changed; (2) new evidence becomes available; or (3) a need exists to correct clear error or prevent manifest injustice. *See e.g., Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689 (M.D. Fla. 1994). In any event, the decision to reconsider is within a court's sound discretion and will not be overturned on appeal absent abuse of discretion. *See Region 8 Forest Service Timber Purchasers Council v. Alcock*, 993 F.2d 800, 806 (11th Cir. 1993)

ORDERED:

1. The Defendant's Renewed Motion to Compel Mental Examination (doc. 219) is GRANTED.

2. The Plaintiffs Sheri Calvo, Veronica Ferek, and Melissa Scarborough are ordered to undergo mental evaluations by Defendants' experts, Randy K. Otto, Ph.D. and Barbara A. Stein, M.D., at dates and times which are mutually convenient to all parties. The Defendants should endeavor to accomplish the testing and clinical interviews of a Plaintiff by the Defendants' experts on the same day and at the same place. If the parties are unable to agree as to the date, time, and conditions of the exams, they should advise the Court.

DONE AND ORDERED at Tampa, Florida on July 10, 2001.



MARK A. PIZZO
UNITED STATES MAGISTRATE JUDGE

cc: Counsel of Record

Date Printed: 07/11/2001

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