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**ELECTRONICALLY
 FILED**
*Superior Court of California,
 County of San Francisco*
04/19/2016
Clerk of the Court
 BY: NOELIA RIVERA
 Deputy Clerk

Attorneys for Defendant and Cross-complainant
 1979 UNION STREET CORPORATION dba
 THE BLUE LIGHT

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN FRANCISCO

Aaron Abel,

Plaintiff,

vs.

1979 UNION STREET CORPORATION; HO
 BET LEE, LAI FONG LEE, AND LEO MING
 LEE, as co-trustees of the Generation-Skipping
 Trust established under the HOM HON PING AND
 KAI TAI LEE REVOCABLE TRUST U/A dated
 December 2, 1976, as amended May 10, 1989;
 MAY LEE; LEO M. LEE; LEO Y. LEE; and
 DOES 1 to 50, inclusive,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No. CGC-15-543471

**SEPARATE STATEMENT OF ITEMS IN
 DISPUTE IN SUPPORT OF DEFENDANT
 / CROSS-COMPLAINANT 1979 UNION
 STREET CORPORATION DBA THE
 BLUE LIGHT'S MOTION TO COMPEL
 FURTHER RESPONSES TO CROSS-
 DEFENDANT GIOVANNI
 NAVARRETE'S RESPONSES TO FIRST
 SET OF FORM INTERROGATORIES;
 REQUEST FOR SANCTIONS AGAINST
 CROSS-DEFENDANT GIOVANNI
 NAVARRETE AND HIS ATTORNEY OF
 RECORD THOMAS W.J. PURTELL IN
 THE AMOUNT OF \$2060.00
 [C.C.P. §2030.300 / C.R.C. 3.1345]**

DISCOVERY

DATE: May 17, 2016
 TIME: 9:00 a.m.
 DEPT: 302
 TRIAL DATE: July 5, 2016

Pursuant to California Rule of Court 3.3145, Defendant / Cross-Complainant 1979 UNION
 STREET CORPORATION dba THE BLUE LIGHT hereby submits the following Separate
 Statement of Items in Dispute:

///

FIRST SET OF FORM INTERROGATORIES [SERVED BY MAIL ON 12/8/15]

TEXT OF FORM INTERROGATORY #15.1:

Identify each denial of a material allegation and each special or affirmative defense in your pleadings and for each:

(a) state all facts upon which you base the denial or special or affirmative defense;

NAVARRETE'S INITIAL RESPONSE TO FORM INTERROGATORY #15.1 [SERVED BY MAIL ON 2/2/16]:

No response to Form Interrogatory #15.1 (omitted).

NAVARRETE'S AMENDED RESPONSE TO FORM INTERROGATORY #15.1 [SERVED BY MAIL ON 3/12/16]:

(a) to (c)

Responding Party objects to this interrogatory on the grounds that it is premature in that Responding Party has not completed their investigation and discovery in this matter. Responding Party further objects on the grounds that the term "material" is vague and ambiguous, and calls for a legal conclusion. Responding Party further objects on grounds that the interrogatory seeks information protected by the work-product doctrine and attorney-client privilege. Without waiving and subject to the objections, Responding Party responds as follows:

See Response to Form Interrogatory 12.1 for witnesses.

The documents the other parties produced in this case may support my response to this interrogatory and the parties to this action should have those documents.

Discovery and investigation continue.

PORTIONS OF NAVARRETE'S AMENDED RESPONSE TO FORM INTERROGATORY #16.1 [SERVED BY MAIL ON 3/12/16] – FOR CONTEXT:

(b) CROSS-COMPLAINANT 1979 UNION STREET CORPORATION caused the damages, if any, complained of in Plaintiff's Complaint by negligently owning and maintaining the premises at issue as CROSS-COMPLAINANT 1979 UNION STREET CORPORATION failed to

properly maintain the stair by the pool table, failed to provide adequate lighting on the stair, and failed to warn of the dangerous condition of the stair by the pool table. CROSS-DEFENDANT GIOVANNI NAVARRETE reserves the right to amend this response.”

SUMMARY OF PLEADINGS- FOR CONTEXT:

Plaintiff Aaron Abel alleges that on September 29, 2013, while he was a patron at Defendant / Cross-Complainant 1979 UNION STREET CORPORATION’s bar called “The Blue Light, he broke his right ankle (and sustained certain other injuries) when he was attacked by Cross-Defendant GIOVANNI NAVARRETE. Plaintiff alleges that 1979 UNION STREET is liable on a theory of negligence, based on the allegation that a step in the premises was dangerous and that there should have been security measures to stop the attack. Plaintiff did not file a lawsuit against NAVARRETE.

On May 12, 2015, 1979 UNION STREET filed a cross-complaint against NAVARRETE and ROES 1-20 for declaratory relief, equitable indemnity, and comparative indemnity for Plaintiff’s claims.

On November 5, 2015, NAVARRETE filed an answer to the 1979 UNION STREET cross-complaint asserting a general denial and 25 affirmative defenses. A summary of the affirmative defenses follows:

1. Failure to state a cause of action.
2. Statute of Limitations.
3. Improper venue.
4. Estoppel.
5. Laches.
6. Waiver.
7. Lack of “jurisdiction.”
8. Implied Assumption of the Risk.
9. Credits and set-offs.
10. Payment and accord and satisfaction.
11. Fault of others.
12. Comparative Fault.

13. Failure to mitigate damages.
14. Preemption.
15. Open and obvious danger – assumption of risk.
16. No proximate causation of damages.
17. “Pure accident.”
18. Failure to join indispensable parties.
19. Proposition 51.
20. Damages became worse after the incident.
21. Damages “almost entirely” occurred after the incident.
22. Comparative Fault.
23. Secondary Implied Assumption of the Risk.
24. Fault of others.
25. Contribution / apportionment.

REASONS WHY A FURTHER RESPONSE SHOULD BE COMPELLED:

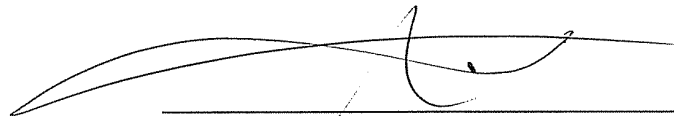
1. Plaintiff’s initial responses did not include any objections to Form Interrogatory #15.1 (or any substantive response, for that matter). The law is clear that objections must be made on or before the deadline for the response or they are statutorily waived. See C.C.P. §2030.290(a). Here, NAVARRETE did timely serve an initial response to the First Set of Form Interrogatories (per extensions) but he did not assert any objections therein to Form Interrogatory #15.1. He therefore waived any objections relating to that specific interrogatory. Scottsdale Insurance Company v. Superior Court (1997) 59 Cal.App.4th 263, 273 (holding that even where the responding party served a timely response, he could not add objections at a later time without a court order –“ In the context of the legislative intent exhibited in the Civil Discovery Act of 1986 (Act), Scottsdale's argument makes no sense. It would allow piecemeal and seriatim doling out of objections to legitimate discovery requests whenever a timely response, no matter how insubstantial, is served. It is clear from the Act that the Legislature intended that any and all objections are to be made at the earliest timely response.”) See also Dreary v. Superior Court (2001) 87 Cal.App.4th 1072, 1078-79 (noting the same principle also generally applies to requests for production of documents).

1 Furthermore, the boilerplate objections lack merit since the term "material" is well known in
2 the law (meaning the allegations that are necessary to state a valid claim or defense) and there is no
3 work product protection and attorney-client privilege for raw facts / underlying facts.

4 2. NAVARRETE has completely failed to provide any substantive response to sub-part
5 (a), which requires that he set forth "all facts upon which he [bases] his [general] denial and 25
6 affirmative defenses. First of all, NAVARRETE has not claimed in the responses (or anywhere else
7 for that matter) that he is unable to provide any facts to support any of his defenses. Second of all,
8 NAVARRETE cannot plausibly make such a claim since he did provide a response to Form
9 Interrogatory #16.1 that includes claims of inadequate maintenance of the "stair," inadequate lighting,
10 and lack of any warnings. He cannot completely ignore the interrogatory. NAVARRETE was
11 provided an opportunity to provide a supplemental response and he failed to do so. The Court should
12 therefore compel him to provide a complete, verified response, defense by defense.

13
14 Dated: April 14, 2016

LAW OFFICES OF MARK R. MITTELMAN



Mark R. Mittelman
Attorneys for Defendant and Cross-complainant
1979 UNION STREET CORPORATION dba
THE BLUE LIGHT

Abel v. 1979 Union Street Corporation, et al.
San Francisco County Action No. CGC-14-543471

PROOF OF SERVICE

I do hereby declare that I am a citizen of the United States employed in the County of Contra Costa, over 18 years old and that my business address is 575 Lennon Lane, Suite 150, Walnut Creek, California 94598. I am not a party to the foregoing action.

On April 19, 2016, I served the following document(s):

SEPARATE STATEMENT OF ITEMS IN DISPUTE IN SUPPORT OF DEFENDANT / CROSS-COMPLAINANT 1979 UNION STREET CORPORATION DBA THE BLUE LIGHT'S MOTION TO COMPEL FURTHER RESPONSES TO CROSS-DEFENDANT GIOVANNI NAVARRETE'S RESPONSES TO FIRST SET OF FORM INTERROGATORIES; REQUEST FOR SANCTIONS AGAINST CROSS-DEFENDANT GIOVANNI NAVARRETE AND HIS ATTORNEY OF RECORD THOMAS W.J. PURTELL IN THE AMOUNT OF \$2060.00

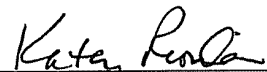
☐ (BY U.S. MAIL) by placing a true copy of the aforementioned document(s) in a sealed envelope and deposited same in the United States mail at Walnut Creek, California, addressed as set forth below. I am readily familiar with this firm's practice of collecting and processing documents for mailing. Under that practice, it would be deposited with the U. S. Postal Service on that same day, with postage thereon fully prepaid, in the ordinary course of business. [Code of Civil Procedure §1013(a)(3)]

☐ (BY FACSIMILE) by causing such document(s) to be successfully transmitted via facsimile to the addressee(s) listed below. [Code of Civil Procedure §1013(e)(f)]

☐ (BY OVERNIGHT DELIVERY) by depositing a true copy thereof in a sealed envelope and depositing in a repository regularly maintained by an express service carrier with fees fully prepaid. [Code of Civil Procedure §1013(c)(d)]

☒ (BY ELECTRONIC SERVICE) by causing such document(s) to be electronically served through File & ServeXpress for the above-entitled case to the parties on the Service List maintained on the File & ServeXpress website for this case. The transmission was reported as complete on the date and time indicated on the File & ServeXpress Transaction Receipt.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the date first set forth above, at Walnut Creek, California.



Katey Riordan

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