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7 1979 UNION STREET CORPORATION dba
THE BLUE LIGHT

ELECTRONICALLY
FILED

*Superior Court of California,
County of San Francisco*

05/09/2016
Clerk of the Court

BY: ANNA TORRES

Deputy Clerk

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10 11 Aaron Abel,

12 Plaintiff,

13 vs.

14 1979 UNION STREET CORPORATION; HO
BET LEE, LAI FONG LEE, AND LEO MING
LEE, as co-trustees of the Generation-Skipping
15 Trust established under the HOM HON PING AND
KAI TAI LEE REVOCABLE TRUST U/A dated
16 December 2, 1976, as amended May 10, 1989;
MAY LEE; LEO M. LEE; LEO Y. LEE; and
17 DOES 1 to 50, inclusive,

18 Defendants.

19 20 AND RELATED CROSS-ACTIONS.

Case No. CGC-15-543471

**DECLARATION OF MARK R.
MITTELMAN IN SUPPORT OF
DEFENDANT / CROSS-COMPLAINANT
1979 UNION STREET CORPORATION
DBA THE BLUE LIGHT'S EX PARTE
APPLICATION FOR AN ORDER
SHORTENING TIME TO HEAR ITS
MOTION FOR PROTECTIVE ORDER
COMPELLING CONTINUED
INDEPENDENT MEDICAL
EXAMINATION OF PLAINTIFF AARON
ABEL AND REQUEST FOR MONETARY
SANCTIONS AGAINST PLAINTIFF
AARON ABEL AND HIS ATTORNEY OF
RECORD JOSEPH MAY**

DATE: May 10, 2016

TIME: 11:00 A.M.

DEPT: 302

21 22 23 I, Mark R. Mittelman, declare:

24 25 1. I am an attorney licensed to practice law in the State of California and am principal of
the Law Offices of Mark R. Mittelman, attorneys of record for Defendant / Cross-Complainant 1979
26 UNION STREET CORPORATION dba THE BLUE LIGHT in the within matter. The following
27 statements are based on my personal knowledge and I could and would competently testify thereto in

1 a court of law.

2 2. Plaintiff AARON ABEL alleges in this lawsuit that he fractured his right ankle after
3 he was allegedly attacked by Cross-Defendant GIOVANNI NAVARRETE at Defendant / Cross-
4 Complainant 1979 UNION STREET CORPORATION's bar "The Blue Light," on September 29,
5 2013. Plaintiff alleges that 1979 UNION STREET is liable for his injuries on a theory of premises
6 liability. Plaintiff alleges in his First Amended Complaint, the operative pleading, that Defendant is
7 liable for a dangerous condition on the premises (a step down that separates the pool table area from
8 the bar area) and for inadequate security. Defendant filed a general denial and various affirmative
9 defenses to the First Amended Complaint. Plaintiff did not file a lawsuit against NAVARRETE,
10 although if Plaintiff is being truthful then NAVARRETE is clearly liable for assault and battery.

11 3. Defendant is moving this Court to enter a protective order pursuant to C.C.P.
12 §2032.510(e) compelling Plaintiff AARON ABEL to submit to a continued Independent Medical
13 Examination with specified conditions, namely that he answer any and all questions that are relevant
14 to the injuries he claims he sustained in the September 29, 2013 incident. Defendant seeks an order
15 compelling Plaintiff to respond to questions regarding each injury, the mechanics of each injury, the
16 medical history relevant to each injury, medical treatment for each injury, the current condition of
17 each injury, and any intended future treatment for each injury. Defendant also seeks the imposition
18 of monetary sanctions against Plaintiff AARON ABEL and his Attorney of Record, Joseph May,
19 jointly and severally, pursuant to the provisions of C.C.P. §2032.510(f).

20 4. Defendant set an IME of Plaintiff for April 15, 2016 with Gordon Lundy, M.D., a
21 licensed physician and board-certified orthopedic surgeon. Plaintiff attended the IME with his
22 Attorney of Record, Joseph May. I have spoken to Dr. Lundy about what occurred at the IME. Dr.
23 Lundy informed me that Plaintiff, upon advice of Mr. May, refused to answer any questions at all
24 concerning his relevant medical history and medical treatment. Dr. Lundy further told me that he did
25 not believe that he could conduct a meaningful IME with the limitations that Mr. May imposed. He
26 therefore suspended the IME to allow me to seek any appropriate relief from the Court.

27 5. From April 15, 2016 to April 26, 2016, I attempted to meet and confer with Mr. May
28 to try and reach an acceptable resolution. This included emails and two formal letters. However, the

1 parties were not able to reach any compromise as plaintiff's counsel refuses to produce plaintiff for
2 an IME. I therefore have had to file this ex parte application.

3 6. If the motion was filed on normal statutory deadlines, the hearing date would be heard
4 during June 6, 2016 to June 20, 2016. Even assuming the earliest date (June 6th), that would mean
5 that any continued IME would take place in mid to late June, or later. This would mean that the IME
6 would be done well after the May 16, 2016 date for expert witness disclosure and possibly after June
7 20, 2016 date expert cut-off date. This would leave little or no time for Dr. Lundy to evaluate
8 Plaintiff and formulate his opinions for his deposition (if any) and trial. Accordingly, Defendant
9 would suffer irreparable harm if the hearing date is not accelerated and the opposition and reply due
10 dates are not shortened. I therefore make application for an order shortening time on the motion for
11 protective order and request for sanctions, and to specially set the opposition and reply dates.

12 7. On May 8, 2016, at 1:59 p.m., I notified plaintiff's counsel, Joseph May, by email, that
13 Defendant would be making this ex parte application. I stated to him that on May 10, 2016, at 11:00
14 A.M., in Department 302 of the Superior Court of San Francisco, 400 McAllister Street, San
15 Francisco, California, Defendant would be appearing ex parte to present an application for an order
16 shortening time on Defendant's motion for protective order to compel a continued Independent
17 Medical Examination and for monetary sanctions. My secretary also spoke with Mr. May on May 9,
18 2016 at 9:24 a.m. and advised him of my intention to appear ex parte on May 10, 2016, at 11:00 a.m.
19 in Department 302.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on this the 9th day of May 2016, in Walnut Creek, California.

Mark R. Mittelman