

0037-7516 1 Mark R. Mittelman (SBN 96598)
2 Paul A. Kanter (SBN 194596)
3 LAW OFFICES OF MARK R. MITTELMAN
4 A Professional Corporation
5 575 Lennon Lane, Suite 150
6 Walnut Creek, California 94598
7 Telephone: (925) 256-0677
8 Facsimile: (925) 256-0679

9 Attorneys for Defendant and Cross-complainant
10 1979 UNION STREET CORPORATION dba
11 THE BLUE LIGHT

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
06/20/2016
Clerk of the Court
BY:VANESSA WU
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
15 BET LEE, LAI FONG LEE, AND LEO MING
16 LEE, as co-trustees of the Generation-Skipping
17 Trust established under the HOM HON PING AND
18 KAI TAI LEE REVOCABLE TRUST U/A dated
19 December 2, 1976, as amended May 10, 1989;
20 MAY LEE; LEO M. LEE; LEO Y. LEE; and
21 DOES 1 to 50, inclusive,
22 Defendants.

Case No. CGC-15-543471

**DECLARATION OF MARK R.
MITTELMAN IN SUPPORT OF
DEFENDANT 1979 UNION STREET
CORPORATION dba THE BLUE LIGHT
EX PARTE APPLICATION FOR
STIPULATED MOTION TO CONTINUE
TRIAL**

Date: June 21, 2016
Time: 11:00 a.m.
Dept: 206

Trial: July 5, 2016

22 AND RELATED CROSS-ACTIONS.

23 I, Mark R. Mittelman, declare:

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

1 order continuing the current trial date of July 5, 2016 to December 12, 2016.

2 2. All parties stipulate to the continuance of the trial of this matter from the currently
3 scheduled date of July 5, 2016 to December 12, 2016. Attached as **Exhibit A** is a true and correct
4 copy of such Stipulation.

5 3. On June 17, 2016, at 1:12 p.m. I emailed Plaintiff Abel's attorney, Joseph S. May,
6 Esq. and Cross-Defendant/Cross-Complainant Navarrette's attorney, Thomas J. Purtell notifying
7 them that our office would be appearing ex parte in Department 206 of the San Francisco County
8 Superior Court, on June 21, 2016 at 11:00 a.m. to request that this Court continue the trial date
9 currently set in this matter. Neither Defendant/Cross-complainant NAVARRETE nor plaintiff ABEL
10 oppose this motion. Said parties stipulate to same. Plaintiff's counsel stated he agreed with the ex
11 parte and will attend the hearing.

12 4. Trial in this matter is scheduled for July 5, 2016. The Court has vacated the
13 Mandatory Settlement Conference.

14 5. Plaintiff AARON ABEL filed his Complaint for Damages. Defendant 1979 UNION
15 STREET CORPORATION DBA THE BLUE LIGHT filed a Demurrer and Motion to Strike portions
16 of plaintiff's Complaint. In response to said defendant's Demurrer and Motion to Strike, plaintiff
17 filed his First Amended Complaint on April 8, 2015. Defendant/Cross-complainant 1979 UNION
18 STREET CORPORATION DBA THE BLUE LIGHT answered plaintiff's First Amended Complaint
19 on May 12, 2015 and filed a Cross-complaint against the alleged assailant Giovanni Navarrette on
20 June 8, 2015. Plaintiff's First Amended Complaint sought to bring into the litigation six new parties
21 (Ho Bet Lee, Lai Fong Lee and Leo Ming Lee as co-trustees of the Generation-Skipping Trust
22 established under the Hom Hon Ping and Kai Tai Lee Revocable Trust U/A dated December 2, 1976
23 as amended May 10, 1089; May Lee, Leo M. Lee, and Leo Y. Lee). After discussions regarding said
24 entity and individuals, on August 17, 2015 plaintiff's counsel stipulated to dismiss said new parties
25 with prejudice. On November 4, 2015, Cross-complainant/Cross-defendant GIOVANNI
26 NAVARRETTE answered Cross-complainant 1979 UNION STREET CORPORATION DBA THE
27 BLUE LIGHT's Cross-complaint and further filed a cross-complaint against 1979 UNION STREET
28 CORPORATION DBA THE BLUE LIGHT. Cross-defendant 1979 UNION STREET

1 CORPORATION DBA THE BLUE LIGHT filed an answer to Cross-complainant/cross-defendant
2 GIOVANNI NAVARRETTE's cross-complaint on December 4, 2015.

3 6. Per plaintiff's responses to Form Interrogatory No. 6.2, plaintiff alleges that he
4 sustained a "fractured right fibula (displaced) and right tibia" and other injuries as a result of the
5 September 29, 2013 incident. Attached as **Exhibit B** is a true and correct copy of such discovery
6 response.

7 7. Plaintiff continues to claim that his right ankle injury has not completely healed and
8 that he may have further problems in the future. As such, I noticed plaintiff's Independent Medical
9 Examination (IME) on February 26, 2016 to take place on April 15, 2016. Attached as **Exhibit C** is
10 a true and correct copy of such discovery.

11 8. At the IME, plaintiff's counsel refused to allow Dr. Lundy, the orthopedist
12 conducting the IME, to inquire as to plaintiff's medical history and treatment related to the injuries
13 sustained in the incident. As such, Dr. Lundy suspended the IME.

14 9. After failed attempts to meet and confer regarding the continuation of the IME,
15 defendant was left with no choice but to file a Motion for Protective Order to Compel Continued
16 Independent Medical Examination With Specified Conditions. Said motion was heard on May 24,
17 2016. The Court granted defendant's Motion for Protective Order. The Court is requested to take
18 judicial notice of such Motion. Attached as **Exhibit D** is a true and correct copy of the Order
19 granting defendant's Motion for Protective Order Compelling Plaintiff's Continued Independent
20 Medical Examination.

21 10. Dr. Lundy is unavailable to examine plaintiff within the next 3 weeks. Dr. Lundy is a
22 practicing orthopedist and only performs independent medical examinations once a week. His first
23 available date for plaintiff's continued IME is August 19, 2016 – which is after the trial date.
24 Attached as **Exhibit E** is a true and correct copy of the Declaration of Gordon Lundy in support of
25 Defendant's Motion to Continue Trial .

26 11. Good cause exists to have Defendant's Ex Parte Application for Stipulated Motion to
27 Continue Trial granted as it is imperative that defendant's expert examines plaintiff prior to trial and
28 be given time to prepare himself for deposition and trial. Likewise, the defense requires time after

1 the examination to further evaluate the case in terms of the nature and extent of plaintiff's claimed
2 damages and plaintiff's alleged need for future medical care. In addition, all parties stipulate to the
3 continuance.

4 12. Irreparable harm to the defense will occur if it is not given the opportunity to have
5 plaintiff examined.

6 13. This matter will not be ready for a meaningful settlement conference unless and until
7 plaintiff's IME is completed and all parties have been given the opportunity to review the results of
8 same. But for plaintiff's counsel's "impermissible disruption" at the initial independent medical
9 examination, this would not be an issue and all parties would have the necessary discovery completed
10 to fully evaluate this matter.

11 14. Attached as **Exhibit F** is a true and correct copy of my correspondence dated May 31,
12 2016, to plaintiff attorney May requesting his stipulation to continue the trial.

13 15. Attached as **Exhibits G, H, H1, H2** are true and correct copies of emails dated May
14 31, 2016, June 6, 2016 and June 7, 2016 between plaintiff attorney May and me wherein May
15 initially refused to stipulate to a continuance of the trial date, but to which he now stipulates.

16 I declare under penalty of perjury of the laws of the State of California that the foregoing is
17 true and correct. Executed on this 20th day of June, 2016, in Walnut Creek, California.

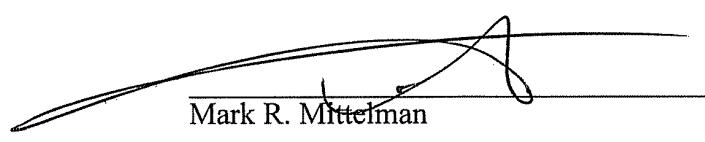
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20 Mark R. Mittelman
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EXHIBIT A

0037-7516 1 Mark R. Mittelman (SBN 96598)
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5 Attorneys for Defendant and Cross-complainant
6 1979 UNION STREET CORPORATION dba
7 THE BLUE LIGHT

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10 11 Aaron Abel,

12 Plaintiff,

13 vs.

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

22 Defendants.

23 AND RELATED CROSS-ACTIONS.

24 Case No. CGC-15-543471

25 **STIPULATION TO CONTINUE TRIAL
26 DATE AND RELATED DATES**

27 Date: June 21, 2016
28 Time: 11:00 a.m.
Dept. 206

Date: June 21, 2016
Time: 11:00 a.m.
Dept. 206

Trial: July 5, 2016

22 **IT IS HEREBY STIPULATED** by and between the parties that the trial date of July 5, 2016
23 may be continued to December 12, 2016, at 9:30 a.m. in Department 206 of the San Francisco
24 Superior Court. The Mandatory Settlement Conference of June 16, 2016 was previously vacated by
25 the court. The court will set a new Mandatory Settlement Conference date. All discovery shall be
26 closed with the exception of expert discovery which will run from the new trial date, expert
27 depositions which have already been noticed and motions to compel, if necessary, with regard to
28 further responses to the parties' recent discovery and motions to compel, if necessary as agreed by the

1 parties and with the exception of the continued Independent Medical Examination of plaintiff with
2 Dr. Gordon Lundy on August 19, 2016 at 11:45 a.m.

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4 Dated: June 16, 2016

LAW OFFICES OF MARK R. MITTELMAN

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Mark R. Mittelman

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

Dated: June 16, 2016

LAW OFFICES OF JOSEPH S. MAY

Joseph S. May
Atorneys for Plaintiff
AARON ABEL

Dated: June _____, 2016

LAW OFFICES OF THOMAS J. PURTELL

Thomas J. Purtell
Atorneys for Cross-Defendant and Cross-
complainant GIOVANNI NAVARRETE

1 parties and with the exception of the continued Independent Medical Examination of plaintiff with
2 Dr. Gordon Lundy on August 19, 2016 at 11:45 a.m.

3
4 Dated: June 16, 2016

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LAW OFFICES OF MARK R. MITTELMAN

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

Dated: June _____, 2016

LAW OFFICES OF JOSEPH S. MAY

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Joseph S. May
Attorneys for Plaintiff
AARON ABEL

Dated: June 16, 2016

LAW OFFICES OF THOMAS J. PURTELL

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Thomas J. Purtell
Attorneys for Cross-Defendant and Cross-
complainant GIOVANNI NAVARRETE

EXHIBIT B

7516-17

CALENDARED

1 Joseph S. May SBN 245924
2 LAW OFFICE OF JOSEPH S. MAY
3 744 Montgomery Street, 5th Floor
4 San Francisco, CA 94111
5 Tel: (415) 781-3333
6 Fax: (415) 707-6600
7 joseph@josephmaylaw.com

8 Attorney for Plaintiff AARON ABEL

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

AARON ABEL,

CASE NO. CGC-15-543471

Plaintiff,

PLAINTIFF'S RESPONSE TO 1979 UNION
STREET CORPORATION'S FORM
INTERROGATORIES, SET ONE

1979 UNION STREET CORPORATION;
JEFFREY DEAN JORDAN; JEFFREY
DAVID AMES; LANCE RANDOLPH
COSSEY; and DOES 1 to 50, inclusive,

Action Filed: January 2, 2015
Trial Date: None set

Defendants.

PROPOUNDING PARTY:

1979 UNION STREET CORPORATION

RESPONDING PARTY:

AARON ABEL

SET NO.:

ONE (1)

Plaintiff Aaron Abel responds to the first set of form interrogatories propounded by
Defendant 1979 Union Street Corporation dba Blue Light ("Blue Light") as follows:

Responding Party has not fully completed his investigation of the facts relating to this
case, has not completed discovery, and has not completed his preparation for trial.

1 **RESPONSE TO FORM INTERROGATORY NO. 6.2:**

2 Fractured right fibula (displaced) and right tibia; concussion; lacerations to head and face,
3 which required stitches. Responding Party also suffered from "garden variety" emotional distress
4 and increased anxious feelings as a result of the incident.

5 **FORM INTERROGATORY NO. 6.3:**

6 Do you still have any complaints that you attribute to the **INCIDENT**? If so, for each
7 complaint state:

- 8 (a) a description;
9 (b) whether the complaint is subsiding, remaining the same, or becoming worse;
10 (c) the frequency and duration.

11 **RESPONSE TO FORM INTERROGATORY NO. 6.3:**

12 Yes.

13 (a) pain, numbness, limited range of motion, swollen appearance, reduced strength in
14 right ankle; soreness at inside and outside of lower right leg/ankle; scar tissue in left side of
15 mouth/lip; noticeable scar near right eye/temple and at right eyelid. Responding Party
16 experiences increased pain during cold weather, increased soreness and discomfort after working
17 out or being on his feet for a couple of hours, slight burning sensation at the location of the
18 surgical incision. Responding Party also experiences repeated itching sensation around his right
19 foot. Responding Party experiences some numbness in his right toes. Responding Party still
20 experiences some emotional distress and anxious thoughts and feelings related to the incident.

- 21 (b) the complaints are generally remaining the same
22 (c) Varies.

23 **FORM INTERROGATORY NO. 6.4:**

24 Did you receive any consultation or examination (except from expert witnesses covered
25 by Code of Civil Procedure Section 2034.210-2034.310) or treatment from a **HEALTH CARE**
26 **PROVIDER** for any injury you attribute to the **INCIDENT**? If so, for each **HEALTH CARE**
27 **PROVIDER** state:

- 28 (a) the name, **ADDRESS**, and telephone number;

EXHIBIT C

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8 SUPERIOR COURT OF CALIFORNIA
 9 COUNTY OF SAN FRANCISCO

10 Aaron Abel,

11 Plaintiff,

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13 1979 UNION STREET CORPORATION; HO
 14 BET LEE, LAI FONG LEE, AND LEO MING
 15 LEE, as co-trustees of the Generation-Skipping
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 December 2, 1976, as amended May 10, 1989;
 MAY LEE; LEO M. LEE; LEO Y. LEE; and
 DOES 1 to 50, inclusive,

17 Defendants.

18 1979 UNION STREET CORPORATION dba THE
 19 BLUE LIGHT,

20 Cross-complainant,

21 vs.

22 GIOVANNI NAVARRETTE, and ROES 1 to 20,
 23 Inclusive,

24 Cross-defendant.

25 Case No. CGC-15-543471

26 **DEFENDANT 1979 UNION STREET
 CORPORATION'S NOTICE OF TAKING
 INDEPENDENT MEDICAL
 EXAMINATION OF PLAINTIFF AARON
 ABEL
 [C.C.P. §2032.010 et seq.]**

27 **DATE: April 15, 2016**

28 **TIME: 11:30 A.M.**

**PLACE: 2100 Webster Street
 Suite #117
 San Francisco, CA 94115**

EXAMINER: Gordon C. Lundy, M.D.

1 GIOVANNI NAVARRETTE,

2 Cross-complainant and Cross-defendant,

3 vs.

4 1979 UNION STREET CORPORATION dba
5 BLUE LIGHT, and ROSE 1 through 20,

6 Defendant, Cross-complainant and Cross-
7 defendant.

8 **TO PLAINTIFF AARON ABEL AND ALL PARTIES AND THEIR ATTORNEYS OF
9 RECORD:**

10 DEMAND IS HEREBY MADE UPON Plaintiff AARON ABEL to submit to a physical
11 examination pursuant to Code of Civil Procedure §2032.020. The place for such examination shall
12 be the medical offices of Gordon C. Lundy, M.D., Orthopaedic Surgery, 2100 Webster Street, Suite
13 #117, San Francisco, CA 94115 (415) 923-3015. The date and time for the examination shall be on
14 **April 15, 2016 at 11:30 A.M.**, and continuing so long as is reasonably required. The examination
15 shall be performed by Gordon C. Lundy, M.D., a licensed physician in the State of California whose
16 specialty is orthopaedic medicine.

17 The examination is expected to last 1 ½ to 2 hours, and will not involve any procedure that is
18 painful, protracted, or intrusive.

19 The following specific procedures will be performed during the examination:

20 1. A complete medical history will be taken from Plaintiff, to evaluate the nature and
21 extent of his alleged right ankle / lower right leg injury.

22 2. Physical tests to evaluate the current condition of Plaintiff's right ankle / lower right
23 leg, including but not necessarily limited to strength, flexibility, range of motion, and pain threshold.

24 3. A complete physical examination of all body parts that Plaintiff claims to have been
25 injured during the incident, including his right ankle and lower right leg.

26 4. Any such further testing or examination that is reasonable and appropriate for
27 Plaintiff's claimed injuries in this lawsuit.

28 All testing is relevant to an evaluation of Plaintiff's alleged injury to his right ankle and lower

1 right leg.

2 Please be aware that if Plaintiff does not provide timely notice of cancellation of this IME, he
3 will incur a fee in the amount of **\$1000.00**. Plaintiff will be solely responsible for this IME
4 cancellation fee. The last date to cancel the IME, without incurring the fee, is **April 11, 2016**. The
5 notice to our office must be provided with sufficient time so that we can notify Dr. Lundy of the
6 cancellation by 5:00 P.M. that day.

7 Defendant hereby further demands that Plaintiff **AARON ABEL** provide a written response
8 to this demand within **twenty days**, pursuant to C.C.P. §2032.230.

9
10 Dated: February 25, 2016

LAW OFFICES OF MARK R. MITTELMAN

11
12 
13 Paul A. Kanter

14 Attorneys for Defendant and Cross-complainant
15 1979 UNION STREET CORPORATION dba
16 THE BLUE LIGHT
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1 Abel v. 1979 Union Street Corporation, et al.
2 San Francisco County Action No. CGC-14-543471

2 **PROOF OF SERVICE**

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

6 On February 26, 2016, I served the following document(s):

7 **DEFENDANT 1979 UNION STREET CORPORATION'S NOTICE OF TAKING
INDEPENDENT MEDICAL EXAMINATION OF PLAINTIFF AARON ABEL**

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

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

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

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

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

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EXHIBIT D

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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
14

[PROPOSED] ORDER GRANTING
DEFENDANT / CROSS-COMPLAINANT
1979 UNION STREET CORPORATION
DBA THE BLUE LIGHT'S MOTION FOR
PROTECTIVE ORDER TO COMPEL
CONTINUED INDEPENDENT MEDICAL
EXAMINATION WITH SPECIFIED
CONDITIONS OF PLAINTIFF AARON
ABEL AND REQUEST FOR SANCTIONS
AGAINST PLAINTIFF AARONABEL
AND HIS ATTORNEY OF RECORD
JOSEPH MAY

DATE: May 24, 2016
TIME: 9:30 a.m.
DEPT: 302
TRIAL DATE: July 5, 2016

On May 24, 2016, Defendant / Cross-Complainant 1979 UNION STREET CORPORATION dba THE BLUE LIGHT's motion for a protective order compelling Plaintiff AARONABEL to submit to a continued Independent Medical Examination (IME) with specified conditions, pursuant to C.C.P. §2032.510(e), and request for monetary sanctions against Plaintiff AARONABEL and his Attorney of Records Joseph May, jointly and severally, pursuant to C.C.P. §2032.510(f), came before this Court. Mark R. Mittelman appeared for Defendant / Cross-Complainant 1979 UNION

1

[PROPOSED] ORDER GRANTING 1979 UNION STREET CORPORATION'S MOTION FOR PROTECTIVE ORDER COMPELLING PLAINTIFF TO SUBMIT TO CONTINUED INDEPENDENT MEDICAL EXAMINATION

FILED
Superior Court of California
County of San Francisco

MAY 31 2016

CLERK OF THE COURT
BY: *[Signature]*
Deputy Clerk

1 STREET CORPORATION dba THE BLUE LIGHT. Joseph May appeared for Plaintiff AARON
2 ABEL.

3 The Court, having considered all of the moving and opposition papers, and the arguments at
4 the hearing, hereby grants the motion and ORDERS as follows:

5 Granted and its request for monetary sanctions is denied. Defendant did not waive its right to
6 seek the relief it seeks by this motion by failing to file a motion prior to the date plaintiff Aaron Abel
7 appeared at Dr. Lundy's office, although in retrospect defendant should have raised and sought
8 resolution of this dispute before that date. There is no authority supporting Mr. Abel's waiver
9 argument and it was reasonable for defendant's counsel to assume that, notwithstanding the
10 objections asserted to the notice of the examination, Dr. Lundy would be able to conduct an
11 examination that included the asking of relevant medical history questions. Mr. May's actions at Dr.
12 Lundy's office constituted an impermissible disruption of Dr. Lundy's efforts to conduct an
13 examination of Mr. Abel. A physical examination of a party necessarily entails asking relevant
14 medical history questions, even if the answers to such questions could be found in other materials
15 such as a deposition transcript or medical records. Mr. Abel must make himself available on a date
16 convenient to Dr. Lundy within the next three weeks for a medical examination and at that
17 examination Dr. Lundy is permitted to ask Mr. Abel questions about Mr. Abel's medical history
18 relevant to the injuries claimed by Mr. Abel. Because the issue raised by this motion should have
19 been dealt with prior to the date Mr. Abel appeared at Dr. Lundy's office, there was substantial
20 justification for Mr. Abel's opposition to the motion on the grounds of waiver and thus monetary
21 sanctions are denied.

22 A medical history is part of the general procedure physicians engage in, in conducting a
23 medical examination and Dr. Lundy will not be precluded from asking normal medical questions with
24 regard to the plaintiff's medical history. This includes the medical history and treatment of the
25 plaintiff with regard to the subject injuries, ~~similar~~ prior injuries to the same body parts and ~~similar~~
26 pre-existing injuries to the same body parts claimed in the subject incident, but shall not include a
27 medical history with regard to unrelated injuries to other body parts. The parties have already agreed
28 that questions with regard to the mechanics of the incident and the plaintiff's current medical

1 complaints and treatment are permissible areas of inquiry by Dr. Lundy. Dr. Lundy may also
2 question plaintiff with regard to how he allegedly fell off the step from the time that he began falling
3 and thereafter. The area of inquiry shall not include questions about the facts of the incident prior to
4 the beginning of the alleged claimed fall.

5

6 **IT IS SO ORDERED.**

7

8 DATED: 5/21, 2016

9

10



JUDGE OF THE SUPERIOR COURT

11

HAROLD KAHN

12

APPROVED AS TO FORM

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JOSEPH S. MAY
Attorney for Plaintiff

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EXHIBIT E

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 6 Attorneys for Defendant and Cross-complainant
 6 1979 UNION STREET CORPORATION dba
 THE BLUE LIGHT

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10
 11 Aaron Abel,

Case No. CGC-15-543471

12 Plaintiff,

**DECLARATION OF GORDON LUNDY,
 M.D. IN SUPPORT OF DEFENDANT /
 CROSS-COMPLAINANT 1979 UNION
 STREET CORPORATION DBA THE
 BLUE LIGHT'S MOTION TO
 CONTINUE TRIAL AND MANDATORY
 SETTLEMENT CONFERENCE**

13 vs.

Date:

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

Time:

19 Defendants.

Dept:

20 **AND RELATED CROSS-ACTIONS.**

Trial Date: July 5, 2016

21 I, Gordon Lundy, declare:

22 1. I have been a licensed physician in the State of California since 1987 and a board-
 23 certified orthopedic surgeon since 1993. I am a treating orthopedic surgeon with a substantial patient
 24 practice. As another part of my practice, I do medical-legal consulting. I have personal knowledge
 25 of the below matters and I could and would testify thereto in a court of law if called upon to do so.

26 2. On or about February 26, 2016, I was retained by the Law Offices of Mark R.
 27 Mittelman, P.C., on behalf of Defendant 1979 Union Street Corporation dba The Blue Light, to
 28 provide opinions regarding the physical injuries allegedly sustained by Plaintiff Aaron Abel during an

1 incident the allegedly occurred at The Blue Light on September 29, 2013.

2 3. As part of my assignment in this matter, the Law Offices of Mark R. Mittelman, P.C.
3 arranged for me to conduct an Independent Medical Examination (IME) of Plaintiff on April 15,
4 2016 at my medical office located at 2100 Webster Street, Suite 117, San Francisco, California
5 94115.

6 4. On April 15, 2016, at approximately 11:45 a.m., Plaintiff presented to me for his IME
7 with his attorney Joseph May.

8 5. During the IME, I sought a description of the injuries and intended to ask questions
9 about medical history, medical treatment, mechanics of injury, current condition, and intended future
10 treatment. As is my custom, I started out with an open-ended question and intended to follow-up
11 with specific questions. Mr. May refused to allow his client to answer any questions at all other than
12 questions about Plaintiff's current condition and the mechanics of the injuries.

13 6. Absent plaintiff's medical history and medical treatment, I did not believe that I could
14 conduct a thorough examination. Plaintiff's counsel continued to refuse to allow plaintiff to provide
15 any medical history or any description of his medical treatment. I had no choice but to suspend the
16 IME.

17 7. Mr. May was disrupting the examination and I therefore stated that I would be
18 suspending the IME so that the Law Offices of Mark R. Mittelman could take whatever legal steps it
19 believed to be necessary.

20 8. After I suspended the IME, I consulted with the Law Offices of Mark R. Mittelman,
21 about this matter. I understand that it will be filing a motion for a protective order to compel the
22 continued IME with specified conditions, and that is why I am submitting this declaration.

23 9. I have since been advised by the Law Offices of Mark R. Mittelman that the Court
24 granted its Motion for Protective Order and has compelled plaintiff to appear at his continued IME.

25 10. I have been contacted by the Law Offices of Mark R. Mittelman regarding my
26 availability to conduct plaintiff's continued IME.

27 11. I am a practicing treating orthopedic surgeon with a substantial patient practice. Due
28 to the demands of my practice, I am only available to conduct one IME per week.

1 12. The first date that I have available to conduct plaintiff's continued IME is August 19,
2 2016.

4 I declare under penalty of perjury of the laws of the State of California that the foregoing is
5 true and correct. Executed on this the 7 day of June 2016, in San Francisco, California.

Gordon Lundy
Gordon Lundy, M.D.

EXHIBIT F

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A Professional Corporation

Attorneys at Law

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Mark R. Mittelman
L. Leianne Choy
Jennifer L. Sommer
Paul A. Kanter

May 31, 2016

VIA FACSIMILE ONLY

(415) 707-6600

Joseph S. May
Law Offices of Joseph S. May
1388 Sutter Street, Suite 810
San Francisco, CA 94109

Re: Aaron Abel v. 1979 Union Street Corporation, et al.
Our File No.: 0037-7516

Dear Mr. May:

Late last week we contacted Dr. Gordon Lundy's office to determine available dates for an independent medical examination which was to have gone forward on April 15, 2016. We were advised by Dr. Lundy's office that the first available date was August 19, 2016 at noon. This date is obviously after the current trial date of July 5, 2016.

In addition, as you are aware, the parties were contacted last week by the Mandatory Settlement Conference Officer appointed in this matter, Malcolm Sher. He has requested Mandatory Settlement Conference Statements by June 6, 2016, has set a teleconference with counsel for June 14, 2016 and the Mandatory Settlement Conference is June 16, 2016. Without an independent medical examination and report thereon, it is not possible to evaluate this case, and thus the Settlement Conference would have very little value in attempting to resolve this matter.

Accordingly, at this time I am seeking your stipulation to continue the trial date and Mandatory Settlement Conference in this matter to dates that are mutually convenient to the court and all parties. I have already spoken with Thomas Purtell, who as you know, represents cross-defendant Giovanni Navarette. He is agreeable to a continuance.

Given that the court granted my client's motion last week for a protective order to compel plaintiff to attend an independent medical examination with Dr. Lundy, and more specifically found your actions to be "an impermissible disruption of Dr. Lundy's efforts to conduct an examination of Mr. Abel", it would certainly be appropriate for you to stipulate to this requested continuance for the reasons stated above. Under the circumstances, it is my belief that the court

Joseph S. May
May 31, 2016

Page 2

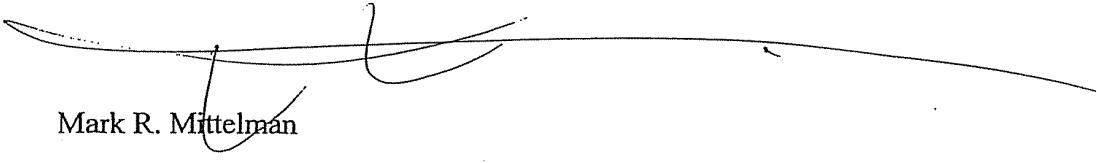
will certainly grant a reasonable continuance. As stated above, I believe the court will see the equities in my client's request.

Please let me hear from you with regard to plaintiff's position within 24 hours. If you are agreeable to this request, my office will prepare the appropriate stipulation and ex parte papers to accomplish the continuance. If you are not agreeable, we will seek an Order Shortening Time to have a Motion to Continue heard on the above grounds.

Thank you for your attention to these matters. I look forward to hearing from you.

Sincerely,

LAW OFFICES OF MARK R. MITTELMAN, P.C.



Mark R. Mittelman

MRM:kr

cc: Thomas Purtell (via fax (415) 834-5591)

* * * Communication Result Report (May. 31. 2016 3:47PM) * * *

Fax Header) LAW OFFICES OF MARK R. MITTELMAN

Date/Time: May. 31. 2016 3:43PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
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Reason for error

E. 1) Hang up or line fail	E. 2) Busy
E. 3) No answer	E. 4) No facsimile connection
E. 5) Exceeded max. E-mail size	

LAW OFFICES OF MARK R. MITTELMAN

A Professional Corporation
Attorneys at Law
575 Lennon Lane, Suite 150
Walnut Creek, California 94598

Telephone: (925) 256-0577
Facsimile: (925) 256-0579

May 31, 2016

VIA FACSIMILE ONLY
(415) 707-6600

Joseph S. May
Law Offices of Joseph S. May
1388 Sutter Street, Suite 810
San Francisco, CA 94109

Re: Aaron Abel v. 1279 Union Street Corporation, et al.
Our File No.: 0037-7516

Dear Mr. May:

late last week we contacted Dr. Gordon Lundy's office to determine available dates for an independent medical examination which was to have gone forward on April 15, 2016. We were advised by Dr. Lundy's office that the first available date was August 19, 2016 at noon. This date is obviously after the current trial date of July 5, 2016.

In addition, as you are aware, the parties were contacted last week by the Mandatory Settlement Conference Officer appointed in this matter, Malcolm Sher. He has requested Mandatory Settlement Conference Statements by June 6, 2016, has set a teleconference with counsel for June 14, 2016 and the Mandatory Settlement Conference is June 16, 2016. Without an independent medical examination and report thereon, it is not possible to evaluate this case, and thus the Settlement Conference would have very little value in attempting to resolve this matter.

Accordingly, at this time I am seeking your stipulation to continue the trial date and Mandatory Settlement Conference in this matter to dates that are mutually convenient to the court and all parties. I have already spoken with Thomas Purcell, who as you know, represents cross-defendant Giovanni Navarrete. He is agreeable to a continuance.

Given that the court granted my client's motion last week for a protective order to compel plaintiff to attend an independent medical examination with Dr. Lundy, and more specifically found your actions to be "an impermissible disruption of Dr. Lundy's efforts to conduct an examination of Mr. Abel", it would certainly be appropriate for you to stipulate to this requested continuance for the reasons stated above. Under the circumstances, it is my belief that the court

EXHIBIT G

From: Joseph S. May [<mailto:joseph@josephmaylaw.com>]
Sent: Tuesday, May 31, 2016 6:49 PM
To: Mark Mittelman
Cc: Paul Kanter; tpurtell@thomaswjpurtell-law.com
Subject: Abel v. Blue Light

Mark,

I received the letter you faxed me earlier today. Plaintiff is adamantly opposed to moving the trial. Judge Kahn has ordered Plaintiff to appear for a physical exam with Dr. Lundy within three weeks. It of course follows that Dr. Lundy must *provide* such an exam in that time period. We will work with you to accommodate his busy schedule, including early morning or late afternoon/evening appointments. Continuing trial is simply not an option as this case has been in litigation for 18 months and re-scheduling the trial will be difficult as my schedule is booked well into October. If Dr. Lundy is unable to comply with Judge Kahn's order, Plaintiff would agree to let Defendant use another defense examiner – obviously there are many in the Bay Area to choose from. Since Lundy apparently never reviewed any materials in this case anyway, getting a new examiner involved should not pose any problem, or result in wasted effort or resources.

Plaintiff is amenable to moving the MSC closer to trial.

-Joseph

LAW OFFICE OF JOSEPH S. MAY
1388 Sutter Street, Suite 810
San Francisco, CA 94109
Tel: (415) 781-3333
Fax: (415) 707-6600
www.josephmaylaw.com

The information contained in this e-mail message is intended only for the use of the individual or entity in the address portion of the e-mail, and inadvertent disclosure to or use by any person other than the intended recipient shall not be deemed a waiver of any attorney-client privilege or expectation of confidentiality. If you are not the designated recipient or the agent or employee responsible to deliver it to the intended recipient, you are not authorized to read, review, disseminate, distribute or copy this communication and any such activity is strictly prohibited. If you have received this communication in error, please notify us immediately. Thank you.

EXHIBIT H

From: Mark Mittelman [<mailto:mmittelman@mittellaw.com>]
Sent: Monday, June 6, 2016 8:49 PM
To: Joseph S. May <joseph@josephmaylaw.com>
Cc: Paul Kanter <pkanter@mittellaw.com>; tpurtell@thomaswpurtell-law.com
Subject: RE: Abel v. Blue Light

Joseph- I spoke to Dr. Lundy's office again late last week and was again advised that they have no earlier available dates for the continued IME. Dr. Lundy's schedule- a full orthopedic surgery practice and patient appointments, allow time to schedule only one IME per week. These are all the IMEs Dr. Lundy performs. That is why the initial IME demand for April 15, 2106 was served 49 days in advance of the IME. I need not remind you again that Judge Kahn found that your actions "constituted an impermissible disruption of Dr. Lundy's efforts to conduct an examination of Mr. Abel". It was your conduct and misjudgment that created these circumstances. We have invested and spent too much money and time with the very capable Dr. Lundy to start all over with another orthopedic surgeon at this point. To find a qualified physician on such short notice and so close to trial is simply not practical nor reasonably possible, again keeping in mind the circumstances of the blocked examination. In addition, it is not possible to evaluate your client's medical status, including the claim that he has continuing discomfort and may need a further surgery at a later time. It is highly prejudicial to again attempt to block this legitimate medical inquiry into your client's claims in this lawsuit and will not allow informed participation in the settlement conference.

With regard to your claims of delay, I must remind you that plaintiff's initial Complaint was deficient and thus the necessary demurrer and motion to strike, with which you concurred given your filing of the First Amended Complaint. At that time, you then surprisingly added six new defendants, many quite elderly, thus delaying the matter further as you had difficulty locating them and serving them, some of which you never were able to serve. You ultimately agreed to dismiss these new defendants once we entered into a stipulation, and after their dismissal the First Amended Complaint was finally at issue. Then I had to chase down and serve Navarette, since you did not name him, and who ultimately did appear.

Good cause clearly exists for a reasonable continuance for the reasons stated above and this case has never been previously continued. Cross-defendant counsel Tom Purtell is agreeable to a trial continuance as I previously informed you. Please reconsider your position and allow the parties to complete the necessary IME and choose a mutually agreeable trial date. Think about it.

Mark R. Mittelman
Law Offices of Mark R. Mittelman P.C.
575 Lennon Lane, Suite 150

EXHIBIT H1

Mark Mittelman

From: Joseph S. May <joseph@josephmaylaw.com>
Sent: Monday, June 06, 2016 9:15 PM
To: Mark Mittelman
Cc: Paul Kanter; tpurtell@thomaswjpurtell-law.com
Subject: RE: Abel v. Blue Light

Mark,

Did you ask Dr. Lundy's office about early morning or evening appointments? I advised that we would make Mr. Abel available to accommodate Dr. Lundy's schedule. In my experience, the physical exam does not typically take that long, especially when the injury has mostly healed (I do not believe any of Plaintiff's doctors will be recommending future surgery, by the way, if that helps). Dr. Lundy has had plenty of time to review the records, Plaintiff's deposition, and other materials in order to make his assessment. It is hard to believe that he cannot side aside time for this physical examination.

In addition to the language you quote below, the Court also found that "defendant should have raised and sought resolution of [the] dispute before [April 15, 2016]." The Court issued an order requiring Mr. Abel to make himself available for a further exam with Dr. Lundy within three weeks. You should have tried to obtain Dr. Lundy's availability several weeks ago, when seeking to compel the further exam. This would have given us the opportunity to raise this issue with Judge Kahn; or, alternatively, it would have given us more time to hash this out.

I cannot agree to continue the trial date for numerous reasons. At this late stage, it would be extremely prejudicial to my client, since schedules have been adjusted, experts have been reserved, and other preparations are being made. In addition, I will not have time in my schedule to try this case until very late in the year, possibly as far out as December. The incident occurred close to three years ago and Plaintiff is entitled to resolution. Your claim that you invested too much in Dr. Lundy already rings hollow, especially since it appeared from Dr. Lundy's declaration that he had not yet reviewed any material pertinent to this case. Defendant could certainly find another examiner and I ask that you try to do so if Dr. Lundy has absolutely no ability to squeeze Mr. Abel in for the exam.

-Joseph

EXHIBIT H2

Mark Mittelman

From: Mark Mittelman
Sent: Tuesday, June 07, 2016 11:23 AM
To: 'Joseph S. May'
Cc: Paul Kanter; tpurtell@thomaswjpurtell-law.com
Subject: RE: Abel v. Blue Light

Joseph- As you are no doubt aware, surgeons generally perform surgeries in the mornings and see patients later in the day. Dr. Lundy is not going to cancel a patient's surgery for your client. There was no reason to arrange the continued IME given your continuing refusal to produce your client, until the court addressed the issues which you opposed at the ex parte and at the hearing of the motion. Given the timeline, it doesn't look like it would have made a difference anyway. I have spoken to Dr. Lundy's office twice to set the continued IME and have already advised you of his availability. This situation was not of Dr. Lundy's making- it was your interference that put us where we are and the court made a specific finding of same. Either you agree to continue the trial or we will seek court intervention, as you are aware. If you change your mind, let me know. Otherwise we will see you tomorrow.

Mark R. Mittelman
Law Offices of Mark R. Mittelman P.C.
575 Lennon Lane, Suite 150
Walnut Creek, CA 94598
925 256-0677
925 256-0679 Fax

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

2 **PROOF OF SERVICE**

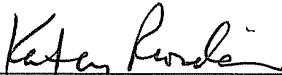
3 I do hereby declare that I am a citizen of the United States employed in the County of Contra
4 Costa, over 18 years old and that my business address is 575 Lennon Lane, Suite 150, Walnut Creek,
5 California 94598. I am not a party to the foregoing action.

6 On June 20, 2016, I served the following document(s):

7 **DECLARATION OF MARK R. MITTELMAN IN SUPPORT OF DEFENDANT 1979 UNION
8 STREET CORPORATION DBA THE BLUE LIGHT EX PARTE APPLICATION FOR
9 STIPULATED MOTION TO CONTINUE TRIAL**

- 10 **(BY U.S. MAIL)** by placing a true copy of the aforementioned document(s) in a sealed envelope
11 and deposited same in the United States mail at Walnut Creek, California, addressed as set forth
12 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)]
- 13 **(BY FACSIMILE)** by causing such document(s) to be successfully transmitted via facsimile to the
14 addressee(s) listed below. [Code of Civil Procedure §1013(e)(f)]
- 15 **(BY OVERNIGHT DELIVERY)** by depositing a true copy thereof in a sealed envelope and
16 depositing in a repository regularly maintained by an express service carrier with fees fully
17 prepaid. [Code of Civil Procedure §1013(c)(d)]
- 18 **(BY ELECTRONIC SERVICE)** by causing such document(s) to be electronically served though
19 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.

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

22 
23 Katey Riordan

1
2 Joseph S. May
3 Law Offices of Joseph S. May
4 1388 Sutter Street, Suite 810
5 San Francisco, CA 94109

6 Thomas J. Purtell
7 The Law Offices of Thomas J. Purtell
8 534 Pacific Avenue, Suite 200
9 San Francisco, CA 94133

10 Attorneys for Plaintiff Aaron Abel
11 Tel: (415) 781-3333
12 Fax: (415) 707-6600
13 Email: joseph@josephmaylaw.com

14 Attorneys for Cross-Defendant/Cross-complainant
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