



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-15-543471

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ORDER

AARON ABEL VS. 1979 UNION STREET CORPORATION et al

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Instructions:

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 10 1979 UNION STREET CORPORATION dba
 11 THE BLUE LIGHT

12 SUPERIOR COURT OF CALIFORNIA
 13 COUNTY OF SAN FRANCISCO

14 Aaron Abel,

15 Plaintiff,

16 vs.

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

25 Defendants.

26 AND RELATED CROSS-ACTIONS.

Case No. CGC-15-543471
 LK

**[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 AARON ABEL
 AND HIS ATTORNEY OF RECORD
 JOSEPH MAY**

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

27 On May 24, 2016, Defendant / Cross-Complainant 1979 UNION STREET CORPORATION
 28 dba THE BLUE LIGHT's motion for a protective order compelling Plaintiff AARON ABEL 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 AARON ABEL 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

FILED
 Superior Court of California
 County of San Francisco

MAY 31 2016

CLERK OF THE COURT

BY: X. Aaron Lee
 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: 5/27, 2016

9
10 
11 JUDGE OF THE SUPERIOR COURT

HAROLD KAHN

12 APPROVED AS TO FORM

13
14 _____
15 JOSEPH S. MAY
16 Attorney for Plaintiff