

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  
10 Attorneys for Defendant and Cross-complainant  
11 1979 UNION STREET CORPORATION dba  
12 THE BLUE LIGHT  
13  
14

**ELECTRONICALLY  
FILED**

*Superior Court of California,  
County of San Francisco*

**06/07/2016**  
**Clerk of the Court**

BY: ROMY RISK

Deputy Clerk

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

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  
December 2, 1976, as amended May 10, 1989;  
MAY LEE; LEO M. LEE; LEO Y. LEE; and  
DOES 1 to 50, inclusive,

19 Defendants.

20 AND RELATED CROSS-ACTIONS.

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 ORDER  
SHORTENING TIME TO HEAR  
MOTION TO CONTINUE TRIAL AND  
MANDATORY SETTLEMENT  
CONFERENCE**

Date: June 8, 2016

Time: 11:00 a.m.

Dept: 206

Trial: July 5, 2016

22 I, Mark R. Mittelman, declare:

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

1 order shortening time to hear Defendant's Motion to Continue Trial and Mandatory Settlement  
2 Conference.

3       2. On June 7, 2016, at 9:50 a.m. my letter was faxed to Plaintiff Abel's attorney, Joseph  
4 S. May, Esq. and Cross-Defendant/Cross-Complainant Navarrette's attorney, Thomas J. Purtell  
5 notifying them that our office would be appearing ex parte in Department 206 of the San Francisco  
6 County Superior Court, on June 8, 2016 at 11:00 a.m. to request that Defendant's Motion to Continue  
7 Trial and Mandatory Settlement Conference be heard on shortened time. I do not believe that  
8 Defendant/Cross-complainant NAVARRETTE will oppose this motion because counsel has advised  
9 me that he is not opposed to a motion to continue the trial. I do not know if Plaintiff's counsel will  
10 oppose this Ex Parte Application for Order Shortening Time to Hear Motion to Continue Trial and  
11 Mandatory Settlement Conference. Attached as **Exhibit A** is a true and correct copy of that letter,  
12 along with the evidence of successful transmission by facsimile.

13       3. Trial in this matter is scheduled for July 5, 2016. The Mandatory Settlement  
14 Conference is scheduled for June 16, 2016.

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

1 cross-complaint against 1979 UNION STREET CORPORATION DBA THE BLUE LIGHT. Cross-  
2 defendant 1979 UNION STREET CORPORATION DBA THE BLUE LIGHT filed an answer to  
3 Cross-complainant/cross-defendant GIOVANNI NAVARRETTE's cross-complaint on December 4,  
4 2015.

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

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

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

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

23. Dr. Lundy is unavailable to examine plaintiff within the next 3 weeks. Dr. Lundy is a  
24 practicing orthopedist and only performs independent medical examinations once a week. His first  
25 available date for plaintiff's continued IME is August 19, 2016 – which is after the trial date.

26. Good cause exists to have Defendant's Motion to Continue Trial and Mandatory  
27 Settlement Conference heard as it is imperative that defendant's expert examines plaintiff prior to  
28 trial and be given time to prepare himself for deposition and trial. Likewise, the defense requires

1 time after the examination to further evaluate the case in terms of the nature and extent of plaintiff's  
2 claimed damages and plaintiff's alleged need for future medical care.

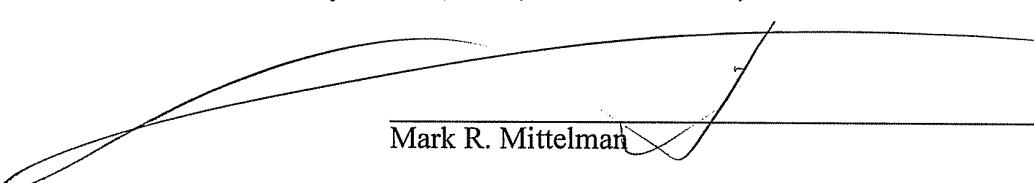
3 11. Irreparable harm to the defense will occur if it is not given the opportunity to have  
4 plaintiff examined.

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

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

12 14. Attached as **Exhibits F, F1, F2, F3** are true and correct copies of emails dated May 31,  
13 2016, June 6, 2016 and June 7, 2016 between plaintiff attorney May and me wherein May refuses to  
14 stipulate to a continuance of the trial date.

15 I declare under penalty of perjury of the laws of the State of California that the foregoing is  
16 true and correct. Executed on this the 7th day of June, 2016, in Walnut Creek, California.

17  
18   
19 Mark R. Mittelman  
20  
21  
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28

## **EXHIBIT A**

# LAW OFFICES OF MARK R. MITTELMAN

A Professional Corporation

## Attorneys at Law

575 Lennon Lane, Suite 150  
Walnut Creek, California 94598

Telephone: (925) 256-0677  
Facsimile: (925) 256-0679

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

June 7, 2016

## VIA FACSIMILE ONLY

Joseph S. May  
Law Offices of Joseph S. May  
1388 Sutter Street, Suite 810  
San Francisco, CA 94109  
**(415) 707-6600**

Thomas J. Purtell  
The Law Offices of Thomas J. Purtell  
534 Pacific Avenue, Suite 200  
San Francisco, CA 94133  
**(415) 834-5591**

Re: Aaron Abel v. 1979 Union Street Corporation, et al.  
San Francisco County Case No. CGC-15-543471  
Our File No.: 0037-7516

Dear Counsel:

Please be advised that on June 8, 2016 at 11:00 A.M., in Department 206 of the Superior Court of San Francisco, 400 McAllister Street, San Francisco, California, Defendant will be appearing ex parte to present an application for an order shortening time to hear Defendant's Motion to Continue Trial and Mandatory Settlement Conference.

Sincerely,

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



Mark R. Mittelman

MRM:kr

## \* \* \* Communication Result Report (Jun. 7, 2016 9:52AM) \* \* \*

Fax Header) LAW OFFICES OF MARK R. MITTELMAN

Date/Time: Jun. 7, 2016 9:50AM

File No. Mode	Destination	Pg (s)	Result	Page Not Sent
9943 Memory TX	14157076600 14158345591	P. 1	OK OK	16

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 94598Telephone: (925) 256-0677  
Facsimile: (925) 256-0679Mark R. Mittelman  
L. Lelane Choy  
Jennifer L. Sommer  
Paul A. Kanter

June 7, 2016

## VIA FACSIMILE ONLY

Joseph S. May  
Law Offices of Joseph S. May  
1388 Sutter Street, Suite 810  
San Francisco, CA 94109  
(415) 707-6600Thomas J. Purcell  
The Law Offices of Thomas J. Purcell  
534 Pacific Avenue, Suite 200  
San Francisco, CA 94133  
(415) 834-5591Re: Aaron Abel v. 1979 Union Street Corporation, et al.  
San Francisco County Case No. CGC-15-543471  
Our File No.: 0037-7516

Dear Counsel:

Please be advised that on June 8, 2016 at 11:00 A.M., in Department 206 of the Superior Court of San Francisco, 400 McAllister Street, San Francisco, California, Defendant will be appearing ex parte to present an application for an order shortening time to hear Defendant's Motion to Continue Trial and Mandatory Settlement Conference.

Sincerely,

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

  
Mark R. Mittelman

MRM:kkr

## **EXHIBIT B**

FEB 26 2015

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

9

10  
11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO  
13 UNLIMITED JURISDICTION

14

15

AARON ABEL,

CASE NO. CGC-15-543471

16

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Plaintiff,

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

18

19

v.

20 1979 UNION STREET CORPORATION;  
21 JEFFREY DEAN JORDAN; JEFFREY  
22 DAVID AMES; LANCE RANDOLPH  
23 COSSEY; and DOES 1 to 50, inclusive,

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

24

25

Defendants.

26

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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

0037-7516 1 Mark R. Mittelman (SBN 96598)  
 2 Paul A. Kanter (SBN 194596)  
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 4 A Professional Corporation  
 5 575 Lennon Lane, Suite 150  
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 Telephone: (925) 256-0677  
 Facsimile: (925) 256-0679

6 Attorneys for Defendant and Cross-complainant  
 7 1979 UNION STREET CORPORATION dba  
 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  
 LEE, as co-trustees of the Generation-Skipping  
 16 Trust established under the HOM HON PING AND  
 KAI TAI LEE REVOCABLE TRUST U/A dated  
 December 2, 1976, as amended May 10, 1989;  
 17 MAY LEE; LEO M. LEE; LEO Y. LEE; and  
 DOES 1 to 50, inclusive,

18 Defendants.

19 20 1979 UNION STREET CORPORATION dba THE  
 BLUE LIGHT,

21 Cross-complainant,

22 vs.

23 24 GIOVANNI NAVARRETTE, and ROES 1 to 20,  
 Inclusive,

25 Cross-defendant.

Case No. CGC-15-543471

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

**DATE: April 15, 2016**

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

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

- (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 though 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

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

5 Thomas J. Purtell  
6 The Law Offices of Thomas J. Purtell  
534 Pacific Avenue, Suite 200  
San Francisco, CA 94133  
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Attorneys for Plaintiff Aaron Able  
Tel: (415) 781-3333  
Fax: (415) 707-6600  
Email: [ioseph@josephmaylaw.com](mailto:ioseph@josephmaylaw.com)

Attorneys for Cross-Defendant/Cross-complainant  
GIOVANNI NAVARRETTE  
Tel: (415) 722-6291  
Fax: (415) 834-5591  
Email: [tpurtell@thomaswjpurtell-law.com](mailto:tpurtell@thomaswjpurtell-law.com)

## **EXHIBIT D**

RECEIVED JUN 02 2016

**F I L E D**  
Superior Court of California  
County of San Francisco

MAY 31 2016

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

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  
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9 Attorneys for Defendant and Cross-complainant  
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.

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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.

27 Case No. CGC-15-543471  
*AK*

28 [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

29 On May 24, 2016, Defendant / Cross-Complainant 1979 UNION STREET CORPORATION  
30 dba THE BLUE LIGHT's motion for a protective order compelling Plaintiff AARONABEL to  
31 submit to a continued Independent Medical Examination (IME) with specified conditions, pursuant to  
32 C.C.P. §2032.510(e), and request for monetary sanctions against Plaintiff AARONABEL and his  
33 Attorney of Records Joseph May, jointly and severally, pursuant to C.C.P. §2032.510(f), came  
34 before this Court. Mark R. Mittelman appeared for Defendant / Cross-Complainant 1979 UNION  
35

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

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<sup>2</sup> 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

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JUDGE OF THE SUPERIOR COURT

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HAROLD KAHN

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APPROVED AS TO FORM

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JOSEPH S. MAY  
Attorney for Plaintiff

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## **EXHIBIT E**

# LAW OFFICES OF MARK R. MITTELMAN

A Professional Corporation

## Attorneys at Law

575 Lennon Lane, Suite 150  
Walnut Creek, California 94598

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

Telephone: (925) 256-0677  
Facsimile: (925) 256-0679

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

**Law Offices of Mark R. Mittelman**  
A Professional Corporation

Joseph S. May  
May 31, 2016

Page 2

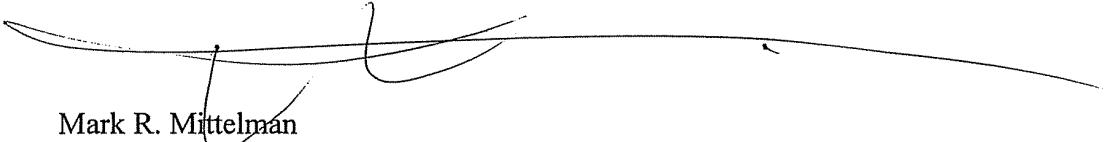
will certainly grant a reasonable continuance. As stated above, I believe the court will see the equities in my client's request.

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. 3) No answer  
 E. 5) Exceeded max. E-mail size

E. 2) Busy  
 E. 4) No facsimile connection

## LAW OFFICES OF MARK R. MITTELMAN

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May 31, 2016

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

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## **EXHIBIT F**

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**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](mailto: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

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1388 Sutter Street, Suite 810  
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[www.josephmaylaw.com](http://www.josephmaylaw.com)

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## **EXHIBIT F1**

**From:** Mark Mittelman [<mailto:mmittelman@mittellaw.com>]  
**Sent:** Monday, June 6, 2016 8:49 PM  
**To:** Joseph S. May <[joseph@josephmaylaw.com](mailto:joseph@josephmaylaw.com)>  
**Cc:** Paul Kanter <[pkanter@mittellaw.com](mailto:pkanter@mittellaw.com)>; [tpurtell@thomaswpurtell-law.com](mailto: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 F2**

## Mark Mittelman

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**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 F3**

## Mark Mittelman

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**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.  
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Walnut Creek, CA 94598  
925 256-0677  
925 256-0679 Fax