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1979 UNION STREET CORPORATION dba  
THE BLUE LIGHT

ELECTRONICALLY  
FILED

**Superior Court of California,  
County of San Francisco**

04/19/2016

## **Clerk of the Cou**

J. RIVERA

SUPERIOR COURT OF CALIFORNIA

## COUNTY OF SAN FRANCISCO

Aaron Abel.

Plaintiff.

vs.

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

## Defendants.

## AND RELATED CROSS-ACTIONS.

Case No. CGC-15-543471

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

DISCOVERY

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

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

11

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

2           **TEXT OF FORM INTERROGATORY #15.1:**

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

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

6           \*\*\*

7           **NAVARRETE'S INITIAL RESPONSE TO FORM INTERROGATORY #15.1 [SERVED BY**

8           **MAIL ON 2/2/16]:**

9           No response to Form Interrogatory #15.1 (omitted).

10          **NAVARRETE'S AMENDED RESPONSE TO FORM INTERROGATORY #15.1 [SERVED**

11          **BY MAIL ON 3/12/16]:**

12          (a) to (c)

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

19          See Response to Form Interrogatory 12.1 for witnesses.

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

22          Discovery and investigation continue.

23          **PORTIONS OF NAVARRETE'S AMENDED RESPONSE TO FORM INTERROGATORY**

24          **#16.1 [SERVED BY MAIL ON 3/12/16] – FOR CONTEXT:**

25          \*\*\*

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

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

4 **SUMMARY OF PLEADINGS- FOR CONTEXT:**

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

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

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

- 17 1. Failure to state a cause of action.
- 18 2. Statute of Limitations.
- 19 3. Improper venue.
- 20 4. Estoppel.
- 21 5. Laches.
- 22 6. Waiver.
- 23 7. Lack of “jurisdiction.”
- 24 8. Implied Assumption of the Risk.
- 25 9. Credits and set-offs.
- 26 10. Payment and accord and satisfaction.
- 27 11. Fault of others.
- 28 12. Comparative Fault.

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

14 **REASONS WHY A FURTHER RESPONSE SHOULD BE COMPELLED:**

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

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

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

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14 Dated: April 14, 2016

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

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

**PROOF OF SERVICE**

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

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

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

- (BY U.S. MAIL)** by placing a true copy of the aforementioned document(s) in a sealed envelope and deposited same in the United States mail at Walnut Creek, California, addressed as set forth below. I am readily familiar with this firm's practice of collecting and processing documents for mailing. Under that practice, it would be deposited with the U. S. Postal Service on that same day, with postage thereon fully prepaid, in the ordinary course of business. [Code of Civil Procedure §1013(a)(3)]
  - (BY FACSIMILE)** by causing such document(s) to be successfully transmitted via facsimile to the addressee(s) listed below. [Code of Civil Procedure §1013(e)(f)]
  - (BY OVERNIGHT DELIVERY)** by depositing a true copy thereof in a sealed envelope and depositing in a repository regularly maintained by an express service carrier with fees fully prepaid. [Code of Civil Procedure §1013(c)(d)]
  - (BY ELECTRONIC SERVICE)** by causing such document(s) to be electronically served 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

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