

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHARLES CHRISTOPHER PERKINS,  
Plaintiff,  
v.  
SENTRY EQUIPMENT ERECTORS, INC.,  
Defendant.

Case No. [4:15-cv-02971-KAW](#)

**ORDER DENYING DEFENDANT'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

Re: Dkt. No. 77

On August 14, 2015, Plaintiff Charles Christopher Perkins filed this products liability action against Defendant Sentry Equipment Erectors, Inc. in state court. Thereafter, the case was removed to federal court and consolidated with the *Lagunitas Brewing Company v. Sentry Equipment Erectors, Inc.* action, which has since settled. Before the Court is Defendant's motion for partial summary judgment against Mr. Perkins on the failure to warn claim.

On July 6, 2017, the Court held a hearing, and, after careful consideration of the parties' arguments and moving papers, and for the reasons set forth below, the Court DENIES Defendant's Motion for Partial Summary Judgment.

**I. BACKGROUND**

Sentry designs and manufactures machinery for use in the beverage bottling industry. In the Spring and Summer of 2013, Lagunitas, a large-scale beer brewer and bottler, custom-designed and purchased a Sentry bulk depalletizer ("depal") machine to incorporate into its existing beer bottling line. The depal removes ("sweeps") layers of bottles, which are stacked on a wooden pallet, one layer at a time, thereby feeding empty bottles into the bottling line. (*See* Decl. of Craig A. Livingston, "Livingston Decl.," Dkt. No. 77-2 ¶ 2; Def.'s Dep. of Charles Christopher Perkins, "Def.'s Perkins Dep.," Livingston Decl., Ex. A at 147:11-151:12.)

1           **A. Plaintiff’s Employment at Lagunitas and his injury**

2           Lagunitas hired Perkins in December 2011 as a “maintenance team lead” for the packaging  
3 (bottling and kegging) line in its Petaluma plant. (Def.’s Perkins Dep. 31:18-32:1.) On August 19,  
4 2013, Perkins’ supervisor, Ryder Morrison, asked him to work on the depal to determine the cause  
5 of a recurring “fault code” problem believed to involve a photo eye sensor and reflector in the  
6 empty pallet discharge area. (Def.’s Perkins Dep. 123:17-125:13). Perkins suspected he might  
7 need to replace the reflector, so he took a new one with him from his office to the depal. (Def.’s  
8 Perkins Dep. 165:22-168:7.)

9           When Perkins arrived at the depal, he was aware that it was in operation because he could  
10 see and hear the machine sweeping layers of empty glass bottles from a loaded pallet in the hoist.  
11 (Def.’s Perkins Dep. 133:17-134:9.) Perkins thought the fault code problem could have been  
12 attributable to a light emitting photo eye sensor and/or a damaged or out-of-adjustment photo eye  
13 reflector. (Def.’s Perkins Dep. 133:17-134:13.) First, Perkins checked to see if the machine  
14 registered power to the photo eye, which is indicated by the illumination of two small indicator  
15 lights (one green, one yellow). (Pl.’s Perkins Dep., Krankemann Decl., Ex. 16 at 143:9-144:7.)  
16 The green light indicates that the machine is on, and the yellow light means that the circuit is  
17 complete, which means that the laser is hitting the reflector and being sent back to the sensor. *Id.*  
18 Perkins confirmed that the indicator lights were both on. *Id.*

19           Next, since the lights were on, Perkins attempted to visually determine whether the photo  
20 eye was actually functioning, as opposed to the indicator light being on without function. (Pl.’s  
21 Perkins Dep., Krankemann Decl., Ex. 17 at 145:14-147:3.) To do so, Perkins leaned over at the  
22 waist and placed his entire upper body in the pallet discharge area, placing his left hand on the  
23 concrete floor, and his right hand on the pallet stop bar component for balance, in an attempt to  
24 look down and back toward his right to see the reflector attached to the inside of the machine.  
25 (Def.’s Perkins Dep. 145:14-148:25.) Both of Perkins’ feet were in contact with the concrete floor  
26 outboard of the depal, and his upper body and arms were inside the depal. *Id.*

27           Perkins knew the pallet stop bar would rise periodically during the normal operation of the  
28 machine to allow an empty pallet to be discharged from the rear side of the hoist. (Def.’s Perkins

1 Dep. 86:5-88:10.) While Perkins attempted to look at the reflector, the pallet stop bar rose and  
2 “grabbed” his right hand resulting in significant crush injuries to his wrist. (Def.’s Perkins Dep.  
3 151:2-23.) Perkins admitted that he did not use LOTO procedures prior to positioning himself into  
4 the operating machine. (Def.’s Perkins Dep. 173:7-10.)

5 **B. Plaintiff’s prior experience**

6 As of the date of his accident, Perkins had 19 years of experience as a maintenance and  
7 repair technician between his employment at Lagunitas and prior jobs. (Def.’s Perkins Dep. 20:9-  
8 23:24, 24:17-25:25.) Perkins understood LOTO was a safety practice intended to ensure a  
9 machine has been locked out from all energy sources to avoid sustaining an injury while  
10 performing work. (Def.’s Perkins Dep. 41:10-42:2.) Not only had Perkins been trained in LOTO  
11 procedures in prior jobs, in a prior position it was his job to train other on safety matters, including  
12 LOTO. (Def.’s Perkins Dep. 42:7-43:25.) Perkins personally taught between 625 and 1,200  
13 employees LOTO procedures during 25 to 30 training seminars provided over a six-year period.  
14 (See Def.’s Perkins Dep. 44:1-8.) These LOTO safety courses involved instructional videos, class  
15 work, question and answer sessions, and physical demonstrations of how to use proper LOTO  
16 procedures on actual machines. (Def.’s Perkins Dep. 44:16-46:7.)

17 Perkins also received LOTO training once employed at Lagunitas. (Def.’s Perkins Dep.  
18 46:17-20.) For example, on February 15, 2011, Perkins attended a safety training class – taught  
19 by supervisor Ryder Morrison – covering LOTO procedures, during which Perkins received a  
20 LOTO training handout which covered LOTO procedures in detail. (Def.’s Perkins Dep. 46:17-  
21 51:18, 52:25-53:7.) Separate and apart from his extensive LOTO training, Perkins had, on many  
22 occasions, personally utilized LOTO procedures while performing service and repair work on  
23 machines. (Def.’s Perkins Dep. 42:7-43:2.) The LOTO training Perkins taught others at Kinetic  
24 Systems and the LOTO training he received pre-accident at Lagunitas both covered the same  
25 important LOTO procedures: 1) Prepare for the shutdown; 2) Shutdown; 3) Isolate energy sources;  
26 4) Apply locks & tags; 5) Control residual energy; and 6) Verify energy control methods. (Def.’s  
27 Perkins Dep. 50:3-51:18, 52:25-58:23.)

28 While at Lagunitas and prior to his accident, Perkins attended a separate “Job Hazard

1 Analysis” training class on September 24, 2012, and he was specifically instructed to follow all  
2 LOTO procedures whenever performing maintenance, unjamming or other service work on any  
3 machine. (Def.’s Perkins Decl. 61:8-65:15.) Perkins attended this training class and received the  
4 training handout from this course which, among other things, instructed him to:

- 5 (1) “Ensure that lockout procedures are followed”;
- 6 (2) “Read all safety owner manual instructions and follow them”;
- 7 (3) “Never, never, never reach into the point of operation of any machine unless it is  
8 locked out and blocked where energy exists.”
- 9 (4) “Follow lockout procedure for all maintenance, unjamming or service work including  
10 tool changes”;
- 11 (5) Verify the lock-out to ensure it is complete before working on the equipment.”

12 (*Id.*; Def.’s Dep. of Ryder Morrison, “Def.’s Morrison Dep.,” Livingston Decl., Ex. E at 57:18-  
13 64:23; Def.’s Morrison Dep., Ex. 9, Livingston Decl., Ex. F.) Perkins admitted he was already  
14 very familiar with these points before attending this training course less than a year before his  
15 incident. (Def.’s Perkins Decl. 61:8-65:15.)

16 **C. Sentry’s LOTO Warnings in its Depal Manual**

17 Sentry’s depal was delivered to Lagunitas with an operation manual which included  
18 a section entitled “Warnings and Notices.” (Def.’s Perkins Dep. 77:6-12.) Perkins spent  
19 several hours reviewing this manual to become familiar with this particular depal and to  
20 better understand how it operated. (Def.’s Perkins Dep. 78:10-19, 80:11-12; Def.’s  
21 Morrison Dep., Ex. 15, Livingston Decl., Ex. G.) During this review, Perkins confirmed  
22 that the manual contained the following warning:

23 **CAUTION!**  
24 **PERSONAL INJURY MAY RESULT IF THE FOLLOWING PRECAUTIONS ARE**  
25 **NOT OBSERVED.**

26 “Be sure electrical power is off and compressed air is off and bled from the machine  
27 before performing maintenance or service.”

28 (Def.’s Perkins Dep. 77:6-12; Def.’s Morrison Dep., Ex. 15, Livingston Decl., Ex. G.) Perkins  
acknowledged it was a standard LOTO admonition. (Def.’s Perkins Dep. 79:24-80:10.)

Sentry’s operation manual also includes a “Trouble Shooting” section. (Trouble Shooting

1 Section, Krankemann Decl., Ex. 23.) The depal has two types of photo eyes: diffused sensors and  
2 reflex sensors. *Id.* at 4. The manual provides that troubleshooting for reflex sensors “consists of  
3 cleaning the eye reflector.” *Id.* The “Photo Eyes” troubleshooting subsection does not refer to  
4 LOTO. *Id.* Mr. Hazlehurst testified that he was never advised that the proper method to  
5 troubleshoot the photo eye was to LOTO the depalletizer and provide power to the photo eye from  
6 another power source. (Pl.’s Dep. of John Hazlehurst, “Pl.’s Hazlehurst Dep.,” Krankemann Decl.,  
7 Ex. 24 at 131:16-132:4.) Notwithstanding, Mr. Hazlehurst testified that he had seen electricians  
8 use a “power box” to provide an independent power source to the photo eyes on similar  
9 depalletizers to service them, which allowed them to “quickly plug into [the depalletizer] and align  
10 photo eyes with it.” (Pl.’s Hazlehurst Dep., Krankemann Decl., Ex. 25 at 132:6-15.) Furthermore,  
11 Mr. Weeks testified that a power source is required to troubleshoot the photo eye and reflector.  
12 (Pl.’s Weeks Dep., Krankemann Decl., Ex. 20 at 141:18-24.)

13 **D. Sentry’s Depal Risk Assessment**

14 On or about August 3, 2013, Sentry conducted a risk assessment of a depal that it was  
15 about to sell. (*See* Pl.’s Dep. of Douglas James Weeks, “Pl.’s Weeks Dep.,” Decl. of W. Christian  
16 Krankemann, “Krankemann Decl.,” Dkt. No. 80-1 ¶ 3, Ex. 3 at 149:19-24.) The meeting was  
17 initiated by John Hazelhurst, who had been recently promoted to manager of machinery. (Pl.’s  
18 Weeks Dep., Krankemann Decl., Ex. 4 at 150:4-151:13.) According to Sentry’s corporate  
19 witness, Mr. Weeks, Mr. Hazelhurst initiated the meeting because it was not known whether a risk  
20 assessment had ever been performed on the depalletizers. *Id.*

21 The risk assessment identified key risks in the “hoist discharge area” of the depal, which is  
22 the same area in which Perkins was injured. (Pl.’s Weeks Dep., Krankemann Decl., Ex. 5 at  
23 156:10-163:22, Ex. 6 at 163:20-22.) The assessment indicated that personnel could access the  
24 area, and that the risk of hand injury could be remedied by designing and installing guarding to  
25 prevent access. (*See* Pl.’s Weeks Dep., Krankemann Decl., Ex. 7 at 164:16-25.)

26 Despite the risk assessment meeting and the determination that the “hoist discharge area”  
27 needed to be guarded, no steps were taken to warn Sentry depal customers of the impending  
28 danger. (Pl.’s Weeks Dep., Krankemann Decl., Ex. 8 at 186:6-15.)





1 *Inc.*, 223 Cal. App. 3d 1305, 1320 (Ct. App. 1990). Defendant, however, contends that Plaintiff is  
2 a sophisticated user, and, therefore, Sentry had no duty to warn him not to attempt service or repair  
3 of a machine that was in operation. (Def.’s Mot. at 10.) The sophisticated user knows, or should  
4 know, about a product’s dangers, such that “the manufacturer's failure to warn is not the legal  
5 cause of any harm.” *Webb v. Special Elec. Co.*, 63 Cal. 4th 167, 182 (2016). Essentially, “[a]  
6 sophisticated user's knowledge is [] the equivalent of prior notice.” *Id.* The sophisticated user  
7 defense does not require actual knowledge of potential hazards, but, rather, only if the user knew  
8 or should have known of the product’s risk in light of his training or skill. *Id.* (citing *Johnson v.*  
9 *Am. Standard, Inc.*, 43 Cal. 4th 56, 71 (2008)). Since “the sophisticated user's knowledge is  
10 essentially a substitute for a warning from the supplier of the product, in order for the defense to  
11 apply, the scope of knowledge of the sophisticated user must parallel the scope of the warning  
12 that would otherwise be required.” *Buckner v. Milwaukee Elec. Tool Corp.*, 222 Cal. App. 4th 522,  
13 535 (2013).

14 In opposition, Plaintiff argues that the sophisticated user defense is inapplicable, because  
15 LOTO could not have been used to avoid injury. (Pl.’s Opp’n at 6-7.) This argument is well  
16 taken. As an initial matter, at the hearing, Defendant conceded that LOTO generally requires  
17 being locked out from all energy sources. Sentry’s corporate witness testified that the depal  
18 requires a power source in order to permit troubleshooting of the photo eye. (*See, e.g.*, Pl.’s Weeks  
19 Dep., Krankemann Decl., Ex. 20 at 141:18-24.) Furthermore, Mr. Hazlehurst, Sentry’s own  
20 mechanical engineer, testified that he was never advised that the proper method to troubleshoot the  
21 photo eye was to LOTO the depal and provide power to the photo eye from an independent power  
22 source. (*See* Pl.’s Hazlehurst Dep., Krankemann Decl., Ex. 24 at 131:16-132:4.) The fact that one  
23 of Sentry’s own engineers did not know how to properly troubleshoot the photo eye, means that  
24 sophistication in LOTO, generally, is not sufficient to make Perkins a sophisticated user of the  
25 depalletizer at issue. This is particularly true when Sentry possessed actual knowledge of the  
26 mitigation technique required to troubleshoot the depal—an independent power source to power  
27 the photo eye— but did not provide the information to Lagunitas or Perkins. (*See* Pl.’s Opp’n at  
28 10.)





1 manual is silent as to using LOTO when troubleshooting the photo eye. (Photo Eye subsection,  
2 Krankemann Decl., Ex. 23 at 4.) Moreover, Mr. Weeks testified that LOTO is not always  
3 necessary when troubleshooting the photo eye. (Pl.'s Weeks Dep., Krankemann Decl., Ex. 29 at  
4 93:21-94:9.) Weeks further testified that Sentry does not have a recommendation in the manual or  
5 any other document for when LOTO becomes necessary when troubleshooting the photo eye and  
6 reflector in question. (Pl.'s Weeks Dep., Krankemann Decl., Ex. 30 at 94:18-95:10.)

7 Therefore, in viewing the evidence in the light most favorable to Plaintiff, the Court finds  
8 that troubleshooting and maintenance are not synonymous, because there was not a LOTO  
9 warning pertaining to troubleshooting the photo eye. Additionally, as discussed above, LOTO  
10 procedures would not have permitted troubleshooting of the photo eye, because an independent  
11 power source was required. *See* discussion, *supra*, Part III.A.i. Accordingly, Defendant's motion  
12 is denied.

13 **iii. Whether the Allegedly Inadequate Warning Caused Plaintiff's Accident**

14 Lastly, Defendant argues that the allegedly inadequate warning did not cause Plaintiff's  
15 accident. (Def.'s Mot. at 13.) Specifically, Defendant contends that Perkins cannot prove that  
16 Sentry's omission was a substantial factor in causing his injury. *Id.*

17 In opposition, Plaintiff argues that Sentry's argument that Perkins would not have followed  
18 safety instructions if they had been provided to him is pure speculation. (Pl.'s Opp'n at 12.) The  
19 Court agrees. Indeed, Sentry's argument requires a credibility determination, which is only  
20 properly made by the finder of fact.

21 Accordingly, Defendant's motion for summary judgment is denied.

22 **IV. CONCLUSION**

23 In light of the foregoing, Defendant Sentry Equipment Erectors, Inc.'s motion for partial  
24 summary judgment is DENIED.

25 IT IS SO ORDERED.

26 Dated: July 6, 2017

27  
28

  
KANDIS A. WESTMORE  
United States Magistrate Judge