

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

**OCT 27 2014**

**D. Rosenbloom**

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Attorney for Plaintiff Hector A. Noval

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF RIVERSIDE**

<p>HECTOR A. NOVAL, individually; HECTOR A. NOVAL, as an Heir of VICTORINO NOVAL and as Personal Representative of the Estate of VICTORINO NOVAL;</p>	<p>CASE NO.: RIC 1201608</p>
<p>Plaintiffs,</p>	<p>Hon. John Vineyard Or other Assigned Judge Department 5 4050 Main Street Riverside, California 92501 <i>Historic Courthouse</i></p>
<p>vs.</p>	<p><b>PLAINTIFF'S STATEMENT RE: "HEARING RE: COMPLETION OF ARBITRATION"</b></p>
<p>KAISER FOUNDATION HEALTH PLAN, INC.; KAISER FOUNDATION HOSPITALS; SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP; RICHARD MARK BRADBURNE; ANTHONY TAPIA; DAN WILSON; NICOLE BASIA BARIL, and DOES 1 through 50, inclusive,</p>	<p>Hearing Date: November 12, 2014 Time: 8:30 A.M. Location: Department 5 4050 Main Street Riverside, California 92501 <i>Historic Courthouse</i></p>
<p>Defendants.</p>	

1. I, Casey Young, am a licensed lawyer within the state of California. I represent Plaintiff Hector A. Noval in the instant matter. I declare the following: I am over 18 years of age, have personal knowledge of the facts stated herein (unless stated on information and belief), and if called upon to testify to those facts I could and would do so competently.

2. There is no arbitration date set, and the arbitrator has "stayed" the case at Defendants' request (and over Plaintiff's objections) until May 2016. According to Defendants, they are concerned about a potential criminal prosecution that could arise against certain of their staff

1 members if anyone amongst them is forced to testify about the death of Victorino Noval. For that  
2 reason, they took all of their depositions off calendar, claiming that they were all going to be asserting  
3 their Fifth Amendment Rights Against Self-Incrimination, and they filed a motion asking the  
4 arbitrator to “stay” the case until after the six-year criminal homicide statute of limitations has run.  
5 Plaintiff objected to the “stay” but the arbitrator granted it.

6           3.       Plaintiff will need to complete Defendants’ depositions before the case is ready  
7 for trial.

8           4.       A four-day arbitration was originally set for March 25, 2014.

9           5.       However, on February 10, 2014, without any warning to Plaintiff, the arbitrator  
10 vacated the arbitration date, citing conflicts with his own personal case load as a sole practitioner in  
11 Los Angeles County.

12           6.       At a subsequent status conference of March 4, 2014, the arbitrator set  
13 arbitration for October 6, 2014. That date has now been vacated by the arbitrator’s order to “stay”  
14 the case until May 2016.

15           7.       To date, the arbitrator has charged at least \$103,185.31 to serve as arbitrator.  
16 The arbitrator’s invoices that I have seen are attached hereto as Exhibit 1.

17           8.       I am informed and believe Defendants have paid the arbitrator timely and in  
18 full for each of these invoices and have not objected to any of the arbitrator’s charges.

19           9.       The arbitrator’s charges include \$12,150 to rule on Defendants’ demurrer and  
20 motion to strike. This included 27 hours (at \$450/hr.) to analyze the issues and draft rulings. The  
21 hearing on the demurrer and motion to strike took place on April 22, 2013, and the arbitrator did not  
22 make his rulings until August 19, 2013. This was a delay of 119 days.

23           10.       The arbitrator’s charges also include \$32,400 to rule on Defendants’ motion for  
24 summary judgment/adjudication. This included 72 hours to analyze the issues and draft a ruling. The  
25 hearing on the MSJ took place on March 4, 2014, and the arbitrator did not make his ruling until June  
26 9, 2014. This was a delay of 97 days.

27           11.       The arbitrator’s invoices reflect a 24 minute ex parte communication with  
28 Defendants on October 17, 2013 (for which the arbitrator charged \$180).

1           12.     Originally, Plaintiff intended to pay half of the arbitrator's fees as required by  
2 the Kaiser Arbitration "Rules." He stopped when the fees started to get too large and too  
3 unreasonable to pay. Defendants volunteered to pay all of the arbitrator's fees in exchange for Plaintiff  
4 agreeing to not object to the fees the arbitrator was charging. Plaintiff agreed to allow Defendants to  
5 pay the fees, but he refused to waive his objections to the fees the arbitrator was charging.

6           13.     The arbitrator then said he would issue Plaintiff a refund of the money Plaintiff  
7 had paid to date, which was \$337.50. However, instead of issuing Plaintiff a refund of \$337.50, the  
8 arbitrator charged Defendants 1 hour of time (at \$450/hr.) to refund Plaintiff and then wrote Plaintiff  
9 a check for \$450. This is reflected in invoice 902, on October 16, 2013, within Exhibit 1. So basically  
10 what happened is that the arbitrator kept Plaintiff's original \$337.50 for himself and then had  
11 Defendants indirectly pay Plaintiff \$450 by charging Defendants an hour's worth of time to write  
12 Plaintiff a check for \$450. I brought this up to the arbitrator, but he refused to answer any questions I  
13 had except to claim, generically, that he did nothing wrong.

14           14.     The allegations of this case are straightforward: Plaintiff's father Victorino  
15 Noval was treated for "aspiration" and/or "pneumonia" in the ICU at Kaiser, Riverside, between  
16 April 28, 2010 and May 7, 2010. He was 78 years old but lived a fairly active lifestyle. He invested in  
17 commercial and residential real estate and had accumulated a portfolio of property that was  
18 generating approximately \$2.5 million per year in *income* (not revenue), and his assets were worth  
19 approximately \$55 million.

20           15.     Plaintiff's father Victorino had a legally binding durable power of attorney for  
21 health care ("DPOA") that named his son, Plaintiff, and daughter Lourdes, as his attorneys-in-fact and  
22 "joint agents" to make his health care decisions "together" where he could not make them himself.  
23 While at the Kaiser ICU, Plaintiff's father was "intubated" for oxygen support and sedated for  
24 comfort. For this reason, at the time, he was too sedated to communicate his own health care  
25 decisions. The Kaiser staff (i.e., Defendants) had a copy of Victorino's DPOA and readily  
26 acknowledged their legal obligations, pursuant to Prob. Code §4202(b), to obtain "unanimous" consent  
27 of *both* "joint agents" before making any change to his treatment plan.

1           16.     Plaintiff appeared at Kaiser four times in the first eight days to ensure his father  
2 was receiving aggressive treatment. Defendants represented each time to Plaintiff that his father was  
3 receiving aggressive treatment, and that his father would continue to receive aggressive treatment until  
4 he expressed otherwise.

5           17.     The medical records reflect that on the ninth day, Plaintiff's father experienced  
6 "material" improvement, and on the tenth day, he experienced "further" improvement. Defendants  
7 never communicated any of this to Plaintiff. Instead, Plaintiff's two sisters, Lourdes and Tania,  
8 appeared at the hospital and urged Defendants to simply end their father's life. These two sisters  
9 claimed that Plaintiff was acting unreasonable for wanting his father to receive continued treatment  
10 and that death was in their father's best interest. (Death meant these siblings would become instant  
11 multi-millionaires).

12           18.     Defendants not only ended Plaintiff's father's life at these two sisters' direction,  
13 but they did so without ever communicating it to Plaintiff or seeking his consent beforehand. It was  
14 their legal duty to do so. Their failure to do so resulted in the un-consented death of their patient.

15           19.     Worse, the medical records (coupled with Defendants' own admissions) reflect  
16 clearly that Defendants falsified their medical notes to make it appear as though they had sought  
17 Plaintiff's consent and that Plaintiff had expressly given it to them. This is something they now admit  
18 they never even attempted to do.

19           20.     Plaintiff's medical experts opine with reasonable medical certainty that  
20 Plaintiff's father would have made a full recovery had treatment continued. Even Defendant  
21 Bradburne, the treating physician, admitted (in his medical records and under oath) that the prognosis  
22 was recovery and discharge from the hospital.

23           21.     For these reasons, Plaintiff asserts two civil causes of action: physical elder abuse  
24 and wrongful death. (Plaintiff has been willing to abandon other causes of action to expedite the case).

25           22.     Plaintiff filed the original complaint in the Riverside Superior Court on  
26 February 2, 2012. Defendants responded by filing a petition to compel arbitration, and the court  
27 granted it on May 9, 2012. The court's order, compelling arbitration, was not appealable. Only a  
28 judgment entered by the court confirming an arbitration award is appealable.



1           23. Plaintiff's argument, on appeal, should the court ever confirm an arbitration  
2 award, will include the argument that the arbitration clause Defendants asserted is unenforceable  
3 because it was not "prominently displayed" in Victorino's Kaiser enrollment form as required by  
4 Health & Safety Code §1363.1(b). Plaintiff's argument will point out that the arbitration clause in  
5 Victorino's enrollment form is more hidden and concealed (i.e., less "prominently displayed") than the  
6 arbitration clauses in the six published Court of Appeal cases finding arbitration clauses unenforceable  
7 for this reason. The point is that there are no assurances that Victorino knew he was waiving his and  
8 his heirs' constitutional right to a jury trial for elder abuse and wrongful death when he enrolled in his  
9 Kaiser insurance plan (on August 15, 1996).

10           24. When this case was compelled to arbitration, Plaintiff did as he was ordered and  
11 submitted to it.

12           25. Defendants demanded Plaintiff submit to arbitration through the "Office of the  
13 Independent Administrator," an entity Defendants, themselves, created to arbitrate lawsuits filed  
14 against them. This "Office of the Independent Administrator" was not even in existence on August 15,  
15 1996 when Victorino signed his Kaiser enrollment form containing the arbitration clause at issue.

16           26. Ironically, the "Office of the Independent Administrator" was created in 1998  
17 after a California Supreme Court case (*Engalla v. Kaiser Permanente Medical Group, Inc. et al.* 15  
18 Cal.4th 951, 986) described in unusually strong detail how Defendants appeared to be fraudulently  
19 inducing their members into believing arbitration was in their best interests, but then manipulating  
20 arbitrations and delaying the process for years to benefit themselves.

21           27. Since then, the "Office of the Independent Administrator" has generated a set  
22 of "Rules for Kaiser Permanente Member Arbitrations" to ensure arbitrations are conducted fairly,  
23 timely, and economically. A current set of these "Rules" is attached hereto as Exhibit 2.

24           28. As ordered, Plaintiff submitted to this "arbitration" and paid the mandatory  
25 arbitration fee of \$150. He did this on May 21, 2012. According to the "Office of the Independent  
26 Administrator's" "Rule 24(a)," this was considered the start date for the arbitration, and the arbitrator  
27 who would be assigned to the case was to ensure the arbitration was completed within the next 18  
28 months, i.e. by November 21, 2013. (See Rule 24(a).)

1           29.     According to the "Rules," there are two exceptions to this 18-month time-limit.  
2 First, per "Rule 24(b)," if the parties agree the arbitration is "complex" and the arbitrator agrees, the  
3 arbitration can be extended to 24-30 months, which in this case would mean arbitration could last  
4 until either May 21, 2014 or November 21, 2014.

5           30.     The second exception is in "Rule 24(c)." According to the "Office of the  
6 Independent Administrator," there are a small number of "extraordinary cases" that cannot be  
7 disposed of within 30 months, "such as those where the damages or injuries cannot be ascertained  
8 within that time." In those cases, where "all" parties and the arbitrator agree, the arbitrator may select  
9 a later date for the disposition of the case. However, *all* parties "shall sign" the Designation of  
10 Extraordinary Arbitration Form, which "will set forth the reason for this designation and the target  
11 disposition date."

12           31.     In the instant arbitration, the "Office of the Independent Administrator"  
13 appointed an arbitrator through a process they call "strike and rank," where the parties are each given  
14 lists of 12 arbitrators. The parties "strike" four from their list and "rank" the remaining. Plaintiff filled  
15 out his list and the "Office of the Independent Administrator" appointed Mr. Robert Rees as the  
16 arbitrator. Mr. Rees was "ranked" 6th out of 8 on Plaintiff's form. Mr. Rees is a sole practitioner in  
17 private practice in Los Angeles County. He has never been a judge.

18           32.     Within months of receiving the case, the arbitrator encouraged the parties to  
19 sign an agreement that the case be considered "complex" (the arbitrator claimed it was "complex" in  
20 his opinion because certain heirs of the victim did not want to participate in the case; i.e., the two  
21 daughters who encouraged Defendants to end their father's life were not named "plaintiffs"). The  
22 arbitrator's email asking the parties to consider agreeing that the case was "complex" is attached  
23 hereto as Exhibit 3. The arbitrator was the one who sought this "complex" designation, not Plaintiff.

24           33.     Plaintiff and I agreed to sign the agreement but stated we wanted to proceed  
25 expeditiously with the case. The arbitrator then set arbitration for March 25, 2014, which meant the  
26 case was still on track to be completed within 22 months.

27           34.     As stated above, the arbitrator vacated this arbitration date *sua sponte* and on his  
28 own motion, citing conflicts with his own personal case load as a sole practitioner in L.A. County.

1           35.    “Rule 28” sets forth the rules for arbitration continuances. It provides no  
2 express authority for the arbitrator to vacate an arbitration date. Instead, Rule 28(a) dictates a strict set  
3 of guidelines for granting any continuance, which includes that any request for a continuance must be  
4 made in writing, and it must set forth “good cause” for the request. It then states that the “failure” “to  
5 keep the hearing dates free from other commitments does not constitute extraordinary circumstances”  
6 needed to justify delays in the arbitration proceeding. I read this to imply that not just the parties, but  
7 the arbitrators, must keep the hearing dates free from other personal commitments.

8           36.    In addition, when a request for a continuance is before the arbitrator, Rule  
9 28(b) requires the arbitrator to issue a written order either denying or granting the request; and where  
10 the arbitrator grants the request, “the order must state the date to which the hearing has been  
11 postponed.”

12           37.    The arbitrator did not comply with these “Rules.” There was no motion filed.  
13 There was no “good cause” set forth. And there was no new date set for the hearing in the arbitrator’s  
14 “order.”

15           38.    Eventually the arbitrator set arbitration for October 6, 2014, which was  
16 approximately one month prior to the arbitrator’s 30 month deadline for completing arbitration. (See  
17 Rule 24(b).) However, the arbitrator vacated this hearing date on August 12, 2014, when he granted  
18 Defendants’ motion to “stay” the case until May 2016.

19           39.    By vacating this arbitration date and “staying” the case until May 2016, the  
20 arbitrator has ensured the case will be in arbitration for more than four years (May 2012 through May  
21 2016). It is likely, given the discovery that must be completed, that the case will be in arbitration even  
22 longer than that.

23           40.    By ordering this “stay,” the arbitrator has broken “Rule 24(c),” which states that  
24 such an extreme delay in the case must be agreed to by all parties, and that all parties must sign a  
25 written stipulation to such a delay. Plaintiff never agreed to this “stay” and never signed a written  
26 stipulation to such a continuance.

27           41.    In November 2012, the Riverside Superior Court held a Case Management  
28 Conference. The court instructed the parties to proceed as expeditiously as possible with arbitration

1 and ordered the parties to attend a Further Case Management Conference in November 2013,  
2 whereby the parties were to prepare and file declarations, under oath, in the Riverside Superior Court,  
3 setting forth the status of arbitration and the efforts taken to complete it expeditiously.

4 42. Prior to the Further Case Management Conference, the Riverside Superior  
5 Court continued the hearing until May 2014 (presumably because of the March 25, 2014 arbitration  
6 date that was on calendar at the time). Thereafter, in May 2014, the court continued the hearing a  
7 second time, to take place now, in November 2014 (presumably because of the October 6, 2014  
8 arbitration date that was on calendar at the time).

9 43. Today is October 27, 2014 and there is no end in sight for this arbitration.

10 44. This process has been unfair to Plaintiff, objectively *and* subjectively.

11 45. Defendants have sought to delay discovery and the completion of this case, and  
12 the arbitrator as obliged Defendants' every request. The arbitrator has accepted more than \$100,000  
13 from Defendants for doing so.

14 46. The parties are now nearly 30 months since arbitration began, and Plaintiff has  
15 not yet been able to take the primary Defendant's deposition, nor has he been able to take a single  
16 "PMQ" deposition. As it currently stands, he will not be able to do so for another 19 months.  
17 Meaning, he will be in arbitration for 49 months (*four years*) before he can even seek to schedule the  
18 primary Defendant's deposition.

19 47. This is a miscarriage of justice.

20 **WHEREFORE**

21 48. For these reasons, among others, Plaintiff respectfully requests the Riverside  
22 Superior Court, at hearing on the status of arbitration, set this matter for an Order to Show Cause as  
23 to why arbitration should not be vacated; and/or for an Order to Show Cause as to why the Riverside  
24 Superior Court should not grant Plaintiff relief from the current "stay" on the underlying civil  
25 complaint so that Plaintiff can proceed with his underlying civil complaint in Superior Court.

26 49. In the alternative, Plaintiff respectfully requests the Riverside Superior Court, at  
27 hearing on the status of arbitration, allow Plaintiff to set a briefing schedule and hearing for a formal  
28 "Petition to Vacate Arbitration."

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct.

3  
4 DATED: October 27, 2014

5 By: Casey Thomas Young  
6 Casey Thomas Young, Esq.  
7 Attorney for Plaintiff Hector A. Noval  
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**Proof of Service**

1 STATE OF CALIFORNIA )  
2 )  
3 COUNTY OF RIVERSIDE )

s.s.

4 I am employed in the County of Orange, State of California. I am over the age  
5 of 18 years of age and not a party to the within action; my business address is 260 Newport Center  
6 Drive, Suite 100, Newport Beach, California 92660.

7 On October 27, 2014, I served the PLAINTIFF'S STATEMENT RE:  
8 "HEARING RE: COMPLETION OF ARBITRATION" on the interested parties in this matter as  
9 follows:


10  [MAIL] by placing a true copy for collection and mailing on the date indicated  
11 below, enclosed in a sealed envelope, addressed as set forth on the attached service list, pursuant to  
12 ordinary business practices. I am "readily familiar" with this firm's practice of collecting and processing  
13 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal service at  
14 Newport Beach, California on the same day in the ordinary course of business. I am aware that on  
15 motion of the party served, service is presumed invalid if the postal cancellation date or postage meter  
16 date is more than 1 day after the date of deposit for mailing in this affidavit.

17  [FAX] by transmitting a true copy by facsimile transmission from facsimile  
18 telephone number (949) 999-0868 to a facsimile machine maintained by the party on whom it was  
19 served, at the facsimile machine number indicated on the attached list. The transmission was reported  
20 as complete and without error. The transmission report which was properly issued by the transmitting  
21 facsimile.

22  [STATE] I declare under penalty of perjury under the laws of the State of  
23 California that the above is true and correct.

24  [FEDERAL] I declare that I am employed in the office of a member of the bar of  
25 this Court at whose direction the service is made.

26 Executed on October 27, 2014 at Newport Beach, California.

27   
28 Casey Thomas Young

**EXHIBIT "1"**

REES LAW FIRM P.C.  
 1925 CENTURY PARK EAST  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice

Invoice #: 754  
 Invoice Date: 10/31/2012  
 Due Date: 10/31/2012  
 Case: NOVAL

**Bill To:**  
 Michael Trotter, Esq.  
 Carroll, Kelly, Trotter, Franzen & McKenn  
 P.O. Box 22636  
 Long Beach, CA 90801

Date	Item	Description	Hours/Qty	Rate	Amount
9/12/2012	Process	opening of new file	0.6	450.00	270.00
9/13/2012	Draft	disclosure letter	0.5	450.00	225.00
9/14/2012	Review and analyze	documents	0.2	450.00	90.00
10/4/2012	Draft	letter setting conference	0.2	450.00	90.00

FEDERAL TAX ID. NO. 26-1650883

Total	\$675.00
Payments/Credits	\$0.00
Balance Due	\$675.00

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REES LAW FIRM P.C.  
 1925 CENTURY PARK EAST  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice #: 792  
 Invoice Date: 1/31/2013  
 Due Date: 1/31/2013  
 Case: NOVAL

Bill To
Casey T. Young, Esq. Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
11/22/2012	Draft	letter to OIA	0.2	450.00	90.00
12/18/2012	E-mail	with counsel re scheduling	0.2	450.00	90.00
1/24/2013	Legal Research	re involuntary plaintiffs	0.3	450.00	135.00
1/24/2013	Review and analyze	motion papers	0.5	450.00	225.00
1/28/2013	Prepare	for hearing	3	450.00	1,350.00
1/29/2013	Prepare	ruling on motion to abate	0.4	450.00	180.00
1/29/2013	Attend	hearing on motion to abate	0.9	450.00	405.00
1/30/2013	Prepare	ruling on motion to abate	1.5	450.00	675.00

Total	\$3,150.00
Payments/Credits	\$0.00
Balance Due	\$3,150.00

FEDERAL TAX ID. NO. 26-1650883



REES LAW FIRM P.C.  
 1925 CENTURY PARK EAST  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice #: 831  
 Invoice Date: 4/30/2013  
 Due Date: 4/30/2013  
 Case: NOVAL

Bill To:
Casey T. Young, Esq. Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
4/22/2013	Review and analyze	Kaiser motion	1.9	450.00	855.00
4/22/2013	Attend	hearing	0.9	450.00	405.00
4/22/2013	Legal Research		0.4	450.00	180.00
4/26/2013	Legal Research		0.6	450.00	270.00

Total	\$1,710.00
Payments/Credits	\$0.00
Balance Due	\$1,710.00

FEDERAL TAX ID. NO. 26-1650883

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REES LAW FIRM P.C.  
 1925 CENTURY PARK EAST  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice #: 856  
 Invoice Date: 6/30/2013  
 Due Date: 6/30/2013  
 Case: NOVAL

Bill To:
Casey T. Young, Esq. Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
5/21/2013	Legal Research		2.9	450.00	1,305.00
5/29/2013	Review and analyze	Winn case	0.8	450.00	360.00
5/22/2013	Draft	ruling	2.5	450.00	1,125.00
5/22/2013	Legal Research		1	450.00	450.00
6/1/2013	Revise	tentative ruling	1.2	450.00	540.00
6/3/2013	Revise	tentative ruling	0.5	450.00	225.00
5/30/2013	Revise	ruling	0.6	450.00	270.00
6/29/2013	Revise	proposed order	1.2	450.00	540.00
6/20/2013	Revise	ruling	1.5	450.00	675.00
6/18/2013	Revise	ruling on demurrer and motion to strike	3.3	450.00	1,485.00

Total	\$6,975.00
Payments/Credits	\$0.00
Balance Due	\$6,975.00

FEDERAL TAX ID. NO. 26-1650883

REES LAW FIRM P.C.  
 1925 CENTURY PARK EAST  
 SUITE 2000  
 LOS ANGELES, CA 90067

# Invoice

Phone # 310-277-7071

Invoice #: 865  
 Invoice Date: 7/31/2013  
 Due Date: 7/31/2013  
 Case: NOVAL

Bill To:
Casey T. Young, Esq. Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
7/1/2013	Revise	ruling	3.7	450.00	1,665.00
7/2/2013	Attend	arbitration status conference	0.7	450.00	315.00
7/2/2013	Draft	arbitration status conference order	0.2	450.00	90.00
7/20/2013	Review and analyze	supplemental briefs	0.8	450.00	360.00

Total	\$2,430.00
Payments/Credits	\$0.00
Balance Due	\$2,430.00

FEDERAL TAX ID. NO. 26-1650883

REES LAW FIRM P.C.  
 1925 CENTURY PARK EAST  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice

Invoice #: 873  
 Invoice Date: 8/31/2013  
 Due Date: 8/31/2013  
 Case: NOVAL

**Bill To:**  
 Casey T. Young, Esq.  
 Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
8/5/2013	Revise	ruling	0.9	450.00	405.00
8/12/2013	Revise	ruling	2	450.00	900.00
8/19/2013	Revise	ruling	0.3	450.00	135.00

<b>Total</b>				<b>\$1,440.00</b>
Payments/Credits				\$0.00
<b>Balance Due</b>				<b>\$1,440.00</b>

FEDERAL TAX ID. NO. 26-1650883

REES LAW FIRM P.C.  
 1925 CENTURY PARK EAST  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice #: 902  
 Invoice Date: 10/31/2013  
 Due Date: 10/30/2013  
 Case: NOVAL

Bill To:
Casey T. Young, Esq. Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
10/14/2013	E-mail	to counsel re new defendants	0.2	450.00	90.00
10/16/2013	E-mail	with O'Neal, counsel	0.2	450.00	90.00
10/17/2013	Telephone Call	with O'Neal	0.4	450.00	180.00
10/27/2013	Draft	order	0.2	450.00	90.00
10/28/2013	Draft	order	0.3	450.00	135.00
10/29/2013	Draft	order	0.5	450.00	225.00
10/16/2013	Credit to client	REFUND OF EARLIER PAYMENT by Mr. Young	1	450.00	450.00

Total	\$1,260.00
Payments/Credits	\$0.00
Balance Due	\$1,260.00

FEDERAL TAX ID. NO. 26-1650883

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REES LAW FIRM P.C.  
 SUITE 2000  
 LOS ANGELES, CA 90067

INVOICE

Phone # 310-277-7071

Invoice #: 912  
 Invoice Date: 11/30/2013  
 Due Date: 11/30/2013  
 Case: NOVAL

Bill To:
Casey T. Young, Esq. Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
11/23/2013	Legal Research	re default of nominal defendants	0.3	450.00	135.00
11/25/2013	Draft	OSC re dismissal	1	450.00	450.00
11/26/2013	Draft	OSC re dismissal	2	450.00	900.00

Total	\$1,485.00
Payments/Credits	\$0.00
Balance Due	\$1,485.00

FEDERAL TAX ID. NO. 26-1650883

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REES LAW FIRM P.C.  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice #: 931  
 Invoice Date: 1/31/2014  
 Due Date: 1/31/2014  
 Case: NOVAL

Bill To
Casey T. Young, Esq. Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
1/6/2014	Prepare	for OSC	1	450.00	450.00
1/7/2014	Attend	hearing on OSC	0.7	450.00	315.00
1/7/2014	Draft	order	0.6	450.00	270.00
1/15/2014	Review and analyze	correspondence from counsel	0.4	450.00	180.00
1/15/2014	Legal Research	re protective order and jurisdiction	0.9	450.00	405.00
1/16/2014	Legal Research	re jurisdiction on protective order	1.3	450.00	585.00
1/17/2014	Legal Research	re protective order	0.2	450.00	90.00
1/22/2014	Legal Research	and letter to counsel	0.4	450.00	180.00

Total	\$2,475.00
Payments/Credits	\$0.00
Balance Due	\$2,475.00

FEDERAL TAX ID. NO. 26-1650883





REES LAW FIRM P.C.  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice #: 942  
 Invoice Date: 2/28/2014  
 Due Date: 3/1/2014  
 Case: NOVAL

**Bill To:**  
 Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
2/1/2014	Review and analyze	motion to amend claim	1	450.00	450.00
2/1/2014	Legal Research	re motion to amend	1	450.00	450.00
2/8/2014	Review and analyze	motions	4	450.00	1,800.00
2/9/2014	Review and analyze	motions	2.7	450.00	1,215.00
2/10/2014	Prepare	for hearing	1	450.00	450.00
2/10/2014	Attend	hearing	1.5	450.00	675.00
2/10/2014	Legal Research	re ruling	0.8	450.00	360.00
2/11/2014	Legal Research	re protective order	0.3	450.00	135.00
2/11/2014	Legal Research	re motion to amend	2.3	450.00	1,035.00
2/11/2014	Draft	ruling on motion for leave to amend	0.7	450.00	315.00
2/12/2014	Draft	order on motion to amend	1	450.00	450.00
2/13/2014	Draft	protective order	0.5	450.00	225.00
2/13/2014	Legal Research	re corporate policy formation	1.2	450.00	540.00
2/14/2014	Draft	ruling on motion for leave to amend	2	450.00	900.00
2/14/2014	Review and analyze	summary judgment motion	1	450.00	450.00
2/15/2014	Draft	protective order	0.2	450.00	90.00
2/15/2014	Draft	ruling on motion for leave to amend	0.9	450.00	405.00
2/17/2014	Review and analyze	msj papers	2.6	450.00	1,170.00
2/18/2014	Draft	protective order	1.2	450.00	540.00
2/19/2014	Revise	protective order	0.4	450.00	180.00
2/19/2014	Revise	order on motion to amend	1.7	450.00	765.00
2/19/2014	Review and analyze	msj papers	2.1	450.00	945.00
2/20/2014	Revise	order on motion to amend	1	450.00	450.00
2/20/2014	Review and analyze	msj papers	1.7	450.00	765.00
2/22/2014	Review and analyze	msj papers	4.2	450.00	1,890.00
2/23/2014	Review and analyze	summary judgment motion	1.8	450.00	810.00
2/24/2014	Review and analyze	summary judgment motion	0.9	450.00	405.00
2/24/2014	Legal Research	re battery issues	0.7	450.00	315.00
2/24/2014	Draft	tentative ruling on motion	0.8	450.00	360.00
2/25/2014	Draft	tentative ruling on motion	1.4	450.00	630.00

Total

Payments/Credits

Balance Due

FEDERAL TAX ID. NO. 26-1650883

[Empty rectangular box]

REES LAW FIRM P.C.  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice #: 942  
 Invoice Date: 2/28/2014  
 Due Date: 3/1/2014  
 Case: NOVAL

<b>Bill To:</b>
Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
2/26/2014	Review and analyze	evidentiary objections	1.5	450.00	675.00
2/28/2014	Review and analyze	discovery motions	0.4	450.00	180.00

Total	\$20,025.00
Payments/Credits	\$0.00
Balance Due	\$20,025.00

FEDERAL TAX ID. NO. 26-1650883

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REES LAW FIRM P.C.  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice #: 947  
 Invoice Date: 3/31/2014  
 Due Date: 3/31/2014  
 Case: NOVAL

Bill To:
Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
2/27/2014	Legal Research	re summary judgment motion	1	450.00	450.00
3/2/2014	Review and analyze	MSJ papers	1.8	450.00	810.00
3/3/2014	Review and analyze	objections to evidence	2.2	450.00	990.00
3/4/2014	Attend	MSJ hearing	4.4	450.00	1,980.00
3/6/2014	Review and analyze	motion to compel	3.7	450.00	1,665.00
3/7/2014	Attend	hearing on discovery dispute	1	450.00	450.00
3/8/2014	Review and analyze	objections to evidence	1.3	450.00	585.00
3/10/2014	Draft	evidentiary rulings	0.6	450.00	270.00
3/11/2014	Draft	evidentiary rulings	0.4	450.00	180.00
3/11/2014	Draft	ruling on motion to compel	0.7	450.00	315.00
3/22/2014	Draft	evidentiary rulings	0.4	450.00	180.00
3/22/2014	Draft	ruling on msj	1.4	450.00	630.00
3/23/2014	Draft	ruling on msj	3	450.00	1,350.00
3/23/2014	Draft	ruling on evidence	0.5	450.00	225.00
3/23/2014	Legal Research	re msj	2	450.00	900.00
3/25/2014	Draft	ruling on msj	1.7	450.00	765.00
3/25/2014	Draft	ruling on evidence	0.4	450.00	180.00
3/4/2014		parking		11.25	11.25

Total	\$11,936.25
Payments/Credits	\$0.00
Balance Due	\$11,936.25

FEDERAL TAX ID. NO. 26-1650883

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REES LAW FIRM P.C.  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice #: 953  
 Invoice Date: 4/30/2014  
 Due Date: 5/11/2014  
 Case: NOVAL

**Bill To:**  
 Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
4/6/2014	Revise	ruling on msj	1.7	450.00	765.00
4/8/2014	Revise	msj ruling	0.7	450.00	315.00
4/8/2014	Legal Research	re objections	1.7	450.00	765.00
4/20/2014	Revise	ruling on msj	1.6	450.00	720.00
4/22/2014	Revise	ruling on MSJ	1.7	450.00	765.00
4/24/2014	Review and analyze	evidentiary issues	3.9	450.00	1,755.00
4/24/2014	Legal Research	re health care decision law	2.2	450.00	990.00
4/24/2014	Review and analyze	claimant's exhibits	0.5	450.00	225.00
4/25/2014	Revise	ruling on MSJ	2.4	450.00	1,080.00
5/1/2014	Revise	rulings	1.6	450.00	720.00
5/3/2014	Revise	rulings	1.8	450.00	810.00
5/8/2014	Revise	msj ruling	1.5	450.00	675.00
5/8/2014	Review and analyze	motion to compel	1	450.00	450.00
5/9/2014	Revise	msj ruling	1.7	450.00	765.00
5/9/2014	Attend	hearing on motion to compel	0.9	450.00	405.00

Total	\$11,205.00
Payments/Credits	\$0.00
Balance Due	\$11,205.00

FEDERAL TAX ID. NO. 26-1650883

REES LAW FIRM P.C.  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice #: 965  
 Invoice Date: 6/30/2014  
 Due Date: 7/2/2014  
 Case: NOVAL

<b>Bill To:</b>
Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
6/3/2014	Review and analyze	question about protective order	0.3	450.00	135.00
6/4/2014	Revise	ruling on msj	1.2	450.00	540.00
6/8/2014	Revise	ruling on MSJ	3	450.00	1,350.00
6/9/2014	Review and analyze	claimant's motions to compel	0.3	450.00	135.00
6/9/2014	Review and analyze	respondents' motions to compel	0.3	450.00	135.00
6/11/2014	Review and analyze	respondents' motions to compel	0.7	450.00	315.00
6/12/2014	Attend	hearing on respondents' motion to compel	0.3	450.00	135.00
6/12/2014	Legal Research	re respondents' motions to compel	0.6	450.00	270.00
6/12/2014	Draft	ruling re respondents' motions to compel	0.3	450.00	135.00
6/14/2014	Legal Research	re claim of bias	0.5	450.00	225.00
6/16/2014	Draft	memo re bias issue	0.3	450.00	135.00
6/17/2014	Legal Research	re bias claim	1	450.00	450.00
6/17/2014	Legal Research	re claimant's motion to compel	1.4	450.00	630.00
6/18/2014	Legal Research	re claimant's motion to compel	1	450.00	450.00
6/18/2014	Revise	ruling re claimant's motion to compel	0.7	450.00	315.00
6/18/2014	Draft	ruling on respondent's motion to compel	0.4	450.00	180.00
6/18/2014	Legal Research	re respondent's motion to compel	0.3	450.00	135.00
6/19/2014	Revise	rulings	0.5	450.00	225.00
6/20/2014	Legal Research	re jurisdiction	1.3	450.00	585.00
6/20/2014	Legal Research	re Pacers motion	1.2	450.00	540.00
6/24/2014	Review and analyze	recusal motion	0.6	450.00	270.00

Total	\$7,290.00
Payments/Credits	\$0.00
Balance Due	\$7,290.00

FEDERAL TAX ID. NO. 26-1650883

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REES LAW FIRM P.C.  
 1925 CENTURY PARK EAST  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice #: 973  
 Invoice Date: 7/31/2014  
 Due Date: 8/5/2014  
 Case: NOVAL

Bill To
Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
7/3/2014	Review and analyze	motion to dismiss	0.7	450.00	315.00
7/5/2014	Review and analyze	motion to reconsider	1.1	450.00	495.00
7/5/2014	Legal Research	re motion to reconsider	2.1	450.00	945.00
7/5/2014	Review and analyze	motion for recusal	0.4	450.00	180.00
7/7/2014	Review and analyze	Pacers motion	1.2	450.00	540.00
7/8/2014	Legal Research	re pacers motion	0.3	450.00	135.00
7/9/2014	Legal Research	re motion for reconsideration	1.2	450.00	540.00
7/10/2014	Review and analyze	Pacers motion	0.4	450.00	180.00
7/10/2014	Review and analyze	earlier motion to compel production of documents	0.4	450.00	180.00
7/10/2014	Legal Research	re joint defense privilege	1.2	450.00	540.00
7/10/2014	Legal Research	re questions about protective order	0.6	450.00	270.00
7/10/2014	Draft	response to objections to February 19, 2014 minute order.	0.3	450.00	135.00
7/10/2014	Legal Research	re Pacers motion	1.5	450.00	675.00
7/11/2014	Prepare	for hearing	0.7	450.00	315.00
7/11/2014	Attend	hearing on various motions	4.4	450.00	1,980.00
7/12/2014	Draft	hearing notes	1.7	450.00	765.00
7/14/2014	Review and analyze	hearing notes	1.4	450.00	630.00
7/15/2014	Review and analyze	hearing notes	1	450.00	450.00
7/16/2014	Prepare	for hearing	0.4	450.00	180.00
7/16/2014	Attend	hearing on motion to recuse	1.3	450.00	585.00
7/16/2014	Legal Research	re motion to recuse	0.5	450.00	225.00
7/16/2014	Draft	ruling on motion to recuse arbitrator	1.2	450.00	540.00
7/17/2014	Revise	ruling on motion to compel documents	0.9	450.00	405.00
7/17/2014	Legal Research	on a/c privilege of others	0.2	450.00	90.00
7/17/2014	Draft	ruling on motion to dismiss for lack of jurisdiction	0.3	450.00	135.00

Total

Payments/Credits

FEDERAL TAX ID. NO. 26-1650883

Balance Due

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REES LAW FIRM P.C.  
 1925 CENTURY PARK EAST  
 SUITE 2000  
 LOS ANGELES, CA 90067

Phone # 310-277-7071

Invoice #: 973  
 Invoice Date: 7/31/2014  
 Due Date: 8/5/2014  
 Case: NOVAL

<b>Bill To:</b>
Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
7/17/2014	Legal Research	re motion to recuse	0.6	450.00	270.00
7/17/2014	Draft	ruling on motion to recuse arbitrator	1.1	450.00	495.00
7/21/2014	Revise	rulings	2.8	450.00	1,260.00
7/21/2014	Legal Research	re rulings	0.6	450.00	270.00
7/22/2014	Revise	rulings	1.4	450.00	630.00
7/29/2014	Draft	ruling on motion for reconsideration	0.4	450.00	180.00
7/29/2014	Revise	ruling on motion to compel discovery	0.7	450.00	315.00
7/29/2014	Revise	ruling on motion to dismiss for lack of jurisdiction	0.3	450.00	135.00
7/29/2014	Revise	ruling on recusal motion	1.2	450.00	540.00
7/31/2014	Revise	ruling on recusal motion	1.2	450.00	540.00
7/31/2014	Draft	ruling on motion for reconsideration	2	450.00	900.00
7/31/2014	Legal Research	re motion for reconsideration	1.4	450.00	630.00
8/1/2014	Attend	hearing on motion for postponement and motion for summary judgment	0.4	450.00	180.00
8/1/2014	Draft	ruling on motion for reconsideration	1.1	450.00	495.00
8/4/2014	Draft	ruling on reconsideration motion	3	450.00	1,350.00
8/5/2014	Draft	ruling on reconsideration motion	4.7	450.00	2,115.00

Total	\$21,735.00
Payments/Credits	\$0.00
Balance Due	\$21,735.00

FEDERAL TAX ID. NO. 26-1650883

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REES LAW FIRM P.C.  
 1925 CENTURY PARK EAST  
 SUITE 2000  
 LOS ANGELES, CA 90067

Invoice

Phone # 310-277-7071

Invoice #: 977  
 Invoice Date: 8/31/2014  
 Due Date: 8/31/2014  
 Case: NOVAL

Bill To:
Michael Trotter, Esq.

Date	Item	Description	Hours/Qty	Rate	Amount
8/5/2014	Revise	ruling on motion for recusal	1.4	450.00	630.00
8/6/2014	Draft	ruling on reconsideration motion	7	450.00	3,150.00
8/7/2014	Revise	rulings	7.7	450.00	3,465.00
8/25/2014		outside copies		34.06	34.06

Total	\$7,279.06
Payments/Credits	\$0.00
Balance Due	\$7,279.06

FEDERAL TAX ID. NO. 26-1650883

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EXHIBIT "2"

**RULES FOR KAISER PERMANENTE MEMBER  
ARBITRATIONS**

**ADMINISTERED BY**

**THE OFFICE OF THE INDEPENDENT ADMINISTRATOR**

**AMENDED AS OF JULY 1, 2014**

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## **A. GENERAL RULES**

### **1. Goal**

These Rules are intended to provide an arbitration process that is fair, timely, lower in cost than litigation, and that protects the privacy interests of all Parties.

### **2. Administration of Arbitration**

The arbitrations conducted under these Rules shall be administered by the Office of the Independent Administrator. Arbitrations conducted under these Rules shall be considered to be consumer arbitrations under California law.

### **3. Confidentiality**

Information disclosed to, and documents received by, an Arbitrator or the Independent Administrator by or from the Parties, their representatives, or witnesses in the course of the arbitration shall not be divulged by the Arbitrator or the Independent Administrator. With respect to the Independent Administrator, this Rule shall not apply to communications concerning Arbitrators, disclosures required by law, or statistical information used in its annual reports.

### **4. Code of Ethics**

All Neutral Arbitrators shall comply with the Ethics Standards for Neutral Arbitrators in Contractual Arbitration, Division VI of the Appendix to the California Rules of Court ("Ethics Standards.") All party arbitrators shall comply with the AAA Code of Ethics for Arbitrators in Commercial Disputes.

### **5. Meaning of Arbitrator**

The term "Arbitrator" in these Rules refers to the arbitration panel, whether composed of one or more Arbitrators or whether the Arbitrators are Neutral or Party. The term "Party Arbitrator" means an Arbitrator selected by one of the sides to the arbitration. The term "Neutral Arbitrator" means any Arbitrator other than a "Party Arbitrator."

### **6. Authority of Arbitrators**

Once appointed, the Neutral Arbitrator will resolve disputes about the interpretation and applicability of these Rules, including disputes relating to the duties of the Arbitrator and the conduct of the Arbitration Hearing. In cases involving more than one Arbitrator, however, issues that are dispositive with respect to a claim, including summary judgment motions, will be ruled on by all three Arbitrators and decided by a majority of them. Upon commencement of the Arbitration Hearing and thereafter, all substantive decisions shall be made by a majority of the full panel or as otherwise agreed by them.

### **7. Contents of the Demand for Arbitration**

The Demand for Arbitration shall include the basis of the claim against the Respondent(s); the amount of damages the Claimant(s) seeks in the Arbitration; the name, address and telephone number of the Claimant(s)

and their attorney, if any; and the name of all Respondent(s). Claimant(s) shall include all claims against Respondent(s) that are based on the same incident, transaction, or related circumstances in the Demand for Arbitration.

**8. Serving Demand for Arbitration**

- a. In Northern California, Kaiser Foundation Health Plan, Inc. ("Health Plan"), Kaiser Permanente Insurance Corporation ("KPIC"), Kaiser Foundation Hospitals, and/or The Permanente Medical Group, Inc. shall be served with a Demand for Arbitration by mailing the Demand for Arbitration addressed to that Respondent(s) in care of:

Kaiser Foundation Health Plan, Inc. or  
Legal Department  
P.O. Box 12916  
Oakland, CA 94604

Kaiser Foundation Health Plan, Inc.  
Legal Department  
1950 Franklin Street, 17th Floor  
Oakland, CA 94612

Service on that Respondent shall be deemed completed when received.

- b. In Southern California, Health Plan, Kaiser Foundation Hospitals, and/or Southern California Permanente Medical Group, shall be served with a Demand for Arbitration by mailing the Demand for Arbitration to that Respondent(s) in care of:

Kaiser Foundation Health Plan, Inc.  
Legal Department  
393 East Walnut Street  
Pasadena, CA 91188

Service on that Respondent shall be deemed completed when received.

- c. All other Respondent(s), including individuals, must be served as required by the California Code of Civil Procedure for a civil action.
- d. All Respondent(s) served with a Demand for Arbitration in the manner described above shall be Parties to the Arbitration. The Arbitrator shall have jurisdiction only over Respondent(s) actually served. If Claimant(s) serves any Respondent(s) other than an organization affiliated with Kaiser Permanente, the Claimant(s) shall serve a proof of service of that Respondent(s) on the Independent Administrator.
- e. Where an order to arbitrate has been entered, the underlying court complaint constitutes the Demand for Arbitration and the entry of the order constitutes its service.

**9. Serving Other Documents**

- a. Service of other documents required by these Rules will be made on the Parties or Arbitrator at their last known address. If the Party is represented in this arbitration, that counsel shall be served instead of the Party. Service may be made by personal service, Federal Express or other similar services, facsimile transmission, or by U.S. mail.
- b. Parties should only serve the Independent Administrator with those documents specified in these Rules. Unless otherwise directed by the Neutral Arbitrator, the parties should not serve the Independent

Administrator with copies of motions or briefs. Service for the Independent Administrator shall be directed to:

Office of the Independent Administrator for the  
Kaiser Foundation Health Plan, Inc.  
3580 Wilshire Boulevard, Suite 2020  
Los Angeles, California 90010

or

Fax: 213-637-8658

or

Email: oia@oia-kaiserarb.com.

- c. If a Party or Arbitrator serves the Independent Administrator by fax or email, the Party or Arbitrator shall call the Independent Administrator's office at 213-637-9847 to confirm receipt or shall retain confirmation of receipt of the faxed or emailed document.
- d. Service on the Independent Administrator is effective on the date the Independent Administrator receives the document.

#### **10. Representation**

Parties represented by counsel shall not contact the Independent Administrator except through counsel.

### **B. RULES ON COMMENCEMENT OF ARBITRATION AND SELECTION OF ARBITRATORS**

#### **11. Initiation of Arbitration**

Demands for Arbitration shall be served in accordance with Rule 8. Whether or not the Claimant(s) has enclosed a filing fee, within ten (10) days of such service upon the Health Plan at the address set forth in Rule 8, Health Plan shall transmit the Demand for Arbitration and the envelope it came in to the Independent Administrator using the Transmission Form. If the Claimant(s) submitted a filing fee with the Demand, the Health Plan shall transmit the filing fee as well. Health Plan shall also serve a copy of the Transmission Form on the Claimant(s).

#### **12. Filing Fee**

- a. Claimant(s) seeking arbitration shall pay a single, non-refundable, filing fee of \$150 per arbitration payable to "Arbitration Account" regardless of the number of claims asserted in the Demand for Arbitration or the number of Claimants or Respondents named in the Demand for Arbitration.
- b. **The Independent Administrator will waive the filing fee for Claimant(s) who submit forms that show that the Claimants' gross monthly income is less than 300 percent of the federal poverty guidelines. A copy of this form may be obtained from the Independent Administrator. Claimants should not serve a copy of this form on Respondent(s).**



- c. If Claimant(s) wishes to have both the filing fee and the Neutral Arbitrators' fees waived, the Claimant(s) should follow the procedure set out in Rule 13. If Claimant(s) wishes only to avoid paying the fees for the Neutral Arbitrator, but can afford the filing fee or has received a waiver under 12.b, the Claimant(s) should follow the procedure set out in Rule 15.
- d. If a Claimant(s) fails to pay the filing fee or obtain a waiver of that fee within seventy-five (75) days of the date of the Transmission Form, the Independent Administrator will not process the Demand and it shall be deemed abandoned.
- e. While the filing fee is normally non-refundable, if Claimant(s) has paid the filing fee with the Demand for Arbitration before receiving notice of the opportunity to have it waived, the Independent Administrator will refund the fee if it receives a completed waiver form within seventy-five (75) days of the date of the Transmission Form and grants the waiver.

**13. Waiver of Filing and Neutral Arbitrator Fees**

Any Claimant(s) who claims extreme hardship may request that the Independent Administrator waive the filing fee and Neutral Arbitrator's fees and expenses. A Claimant(s) who seeks such a waiver shall complete the Fee Waiver Form and submit it to the Independent Administrator and simultaneously serve it upon Respondent(s). The Fee Waiver Form sets out the criteria for waiving fees and is available from the Independent Administrator or by calling the Kaiser Permanente Member Service Customer Center at 1-800-464-4000. Respondent(s) may submit any response to the Independent Administrator within ten (10) days of the date of Claimant's Fee Waiver Form, and shall simultaneously serve any submission upon Claimant(s). Within fifteen (15) days of receipt of a Fee Waiver Form, the Independent Administrator shall determine whether the fees should be waived and notify the Parties in writing of the decision. In those cases where the Independent Administrator grants the waiver of fees, the Independent Administrator shall waive the filing fee and Health Plan shall pay the Neutral Arbitrator's fees and expenses.

**14. Number of Arbitrators**

- a. If the Demand for Arbitration seeks total damages of \$200,000 or less, the dispute shall be heard and determined by one Neutral Arbitrator, unless the Parties otherwise agree in writing that the arbitration shall be heard by two Party Arbitrators and a Neutral Arbitrator. The Arbitrators shall not have authority to award monetary damages that are greater than \$200,000.
- b. If the Demand for Arbitration seeks total damages of more than \$200,000, the dispute may be heard and determined by one Neutral Arbitrator and two Party Arbitrators, one appointed by the Claimant(s) and one appointed by the Respondent(s). Parties who are entitled to select a Party Arbitrator under these Rules may agree to waive this right. If both Parties agree, these arbitrations will be heard by a single Neutral Arbitrator.
- c. A Party who is entitled to a Party Arbitrator and decides to waive this right shall sign a Waiver of Party Arbitrator Form and serve a copy of it upon the Independent Administrator, Neutral Arbitrator, and other Party. The Claimant(s) shall serve this form on the Neutral Arbitrator and Respondent(s) no later than the date of the Arbitration Management Conference set out in Rule 25 and shall serve the Independent

Administrator no later than five (5) days after serving the other Parties. If a Claimant(s) serves Respondent(s) with a signed Waiver of Party Arbitrator - Claimants Form, Respondent(s) shall inform Claimant(s) within five (5) days of the date of that Form if Respondent(s) will also waive the Party Arbitrator.

- d. The Blue Ribbon Advisory Panel on Kaiser Permanente Arbitration concluded that Party Arbitrators increase the cost and cause more delay than would occur with a single Neutral Arbitrator. The Independent Administrator therefore encourages Parties to use a single Neutral Arbitrator to decide cases.
- e. The number of Arbitrators may affect the Claimant(s)' responsibility for paying the Neutral Arbitrator's fees and expenses, as set out in Rule 15.

**15. Payment of Neutral Arbitrator Fees and Expenses**

- a. Respondent shall pay for the fees and expenses incurred by the Neutral Arbitrator if
  - i. Claimant(s) agrees to waive any potential objection arising out of such payment, signs the Waiver of Objection to Payment of Fees Form, and serves a copy of it on the Independent Administrator and Respondent(s); and
  - ii. either the arbitration has only a single Neutral Arbitrator or the Claimant(s) has served a Waiver of Party Arbitrator - Claimants Form as set out in Rule 14.c.
- b. In arbitrations where the Independent Administrator has granted Claimant's Fee Waiver request, Respondent shall pay the fees and expenses incurred by the Neutral Arbitrator.
- c. In all other arbitrations, the fees and expenses of the Neutral Arbitrator shall be paid one-half by the Claimant(s) and one-half by the Respondent(s).
- d. Nothing in this Rule shall prohibit an order requiring the payment of the Neutral Arbitrator's fees and expenses which were incurred as a result of conduct which causes the Neutral Arbitrator to incur needless fees and expenses. Such conduct includes, but is not limited to, failure to respond to discovery requests, abusive discovery practices, the filing of frivolous motions of all sorts, and untimely requests for continuances. In the event that such a finding is made by the Neutral Arbitrator, those fees and expenses shall be paid by the responsible Party or counsel. The Neutral Arbitrator shall make such a finding in writing, shall specify what fees and expenses are covered by the order, and shall serve a copy of the finding on the Independent Administrator with the Parties' names redacted.
- e. In arbitrations brought by Health Plan or KPIC:
  - i. "Claimant(s)" means KPIC or Health Plan. "Respondent(s)" means the member or member's family or representative.

- ii. Claimant KPIC or Health Plan shall pay for fees and expenses incurred by the Neutral Arbitrator if:
  - (a) Respondent(s) agrees to waive any potential objection arising out of such payment, signs the Waiver of Objection to Payment of Fees Form, and serves a copy of it on the Independent Administrator and Claimant(s); and
  - (b) either the arbitration has only a single Neutral Arbitrator or the Respondent(s) has served a Waiver of Party Arbitrator - Consumer Form as set forth in Rule 14c.
- iii. If the Respondent fails to appear in the arbitration, KPIC or Health Plan shall pay for the fees and expenses incurred by the Neutral Arbitrator.

**16. List of Possible Arbitrators**

- a. Within three (3) business days after the Independent Administrator has received both the Demand for Arbitration and the filing fee, or has granted a request for waiver of fees, it shall simultaneously send to each Party an identical List of Possible Arbitrators, along with the Application forms of and redacted Awards, if any, by each of the possible Neutral Arbitrators.
- b. The List of Possible Arbitrators shall contain the names of twelve (12) persons. The Independent Administrator will choose the twelve (12) names at random from the Independent Administrator's arbitration panel for San Diego, Southern or Northern California, based on the location where the cause of action arose.
- c. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Independent Administrator must receive the Parties' responses to the List of Possible Arbitrators on or before the deadline date appearing on the List of Possible Arbitrators. This deadline will be twenty (20) days from the day the Independent Administrator sent the List of Possible Arbitrators. Rules 17 and 18 specify how the Parties may respond.

**17. Joint Selection of the Neutral Arbitrator**

- a. The Parties may all agree upon a person listed on the List of Possible Arbitrators. If they do, the Parties and counsel shall sign the Joint Selection of Neutral Arbitrator Form. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Independent Administrator must receive the form by the deadline set out in Rule 16.c.
- b. Rather than selecting a Neutral Arbitrator from the List of Possible Arbitrators, the Parties may agree to select another person to serve as Neutral Arbitrator, provided that the person agrees in writing to comply with these Rules. If the Parties collectively select a person not on the List of Possible Arbitrators, all the Parties and counsel shall complete and sign the Joint Selection of Neutral Arbitrator Form. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Independent Administrator must receive the form by the deadline set out in Rule 16.c.
- c. The Independent Administrator encourages Parties, if possible, to make more than one joint selection and requires the Claimant and Respondent to individually submit the List of Possible Arbitrators under Rule 18. If the person the Parties have jointly selected is unable to serve, the

Independent Administrator will then first use other joint selection(s). If only one joint Selection was submitted, the Independent Administrator will then use the strike and ranked List(s) of Possible Arbitrators. If no such List was submitted, Rule 18.c shall apply, and the Independent Administrator will randomly select a possible Neutral Arbitrator from the List of Possible Arbitrators.

- d. After the Independent Administrator has received these forms, it will send a Letter Confirming Service to the person who has agreed to act as Neutral Arbitrator, with a copy to the Parties.

**18. Selection of the Neutral Arbitrator When the Parties Do Not Agree**

- a. If the Parties do not collectively agree upon a Neutral Arbitrator, the Neutral Arbitrator shall be selected from the List of Possible Arbitrators in the following manner. Claimant(s) and Respondent(s) may each strike up to four (4) names to which the Party objects and shall rank the remaining names in order of preference with "1" being the strongest preference. No name should be left blank. Unless there is a ninety (90) day continuance pursuant to Rule 21, the Independent Administrator must receive the forms by the deadline set out in Rule 16.c.
- b. Regardless of the number of Claimants or Respondents, the Claimant(s) shall return only one list of preferences and the Respondent(s) shall return only one list of preferences. If they do not, Rule 18.c will apply.
- c. Unless there is a ninety (90) day continuance pursuant to Rule 21, if the Independent Administrator does not receive a response from a Party by the deadline set out in Rule 16.c, all persons named on the List of Possible Arbitrators shall be deemed equally acceptable Neutral Arbitrators to that Party.
- d. At any time before the Party's response is due, a Party or representative may request to review further information, if any, which the Independent Administrator has in its files about the persons named on the List of Possible Arbitrators. Parties and their representatives may call the Independent Administrator at 213-637-9847 to request such information. The Parties and their representatives may review the information by going to the Independent Administrator's office. If requested, the Independent Administrator will also send the information to the Party or attorney by mail or fax. Parties who request that further information be sent to them shall be responsible for the Independent Administrator's cost of providing it, with no charge made for duplication of the first twenty-five (25) pages. Time spent requesting or waiting for the additional information shall not extend the time to respond to the List of Possible Arbitrators.
- e. Working from the returned Lists of Possible Arbitrators it has timely received, the Independent Administrator shall invite a person to serve as the Neutral Arbitrator, asking first the person with the lowest combined rank whose name has not been stricken by either Party. If the person with the lowest combined rank is not available, the Independent Administrator will ask the second lowest ranked person who was not stricken by either party, and will continue until a person whose name was not stricken agrees to serve. When the Independent Administrator contacts the persons, it shall inform them of the names of the Parties and their counsel and ask them not to accept if they know of any conflict of interest. If there is a tie in ranking, the Independent Administrator shall choose at random a person from the list of those who are tied.

- f. If a Party disqualifies a Neutral Arbitrator, the Independent Administrator shall send another List of Possible Arbitrators to the Parties. The procedure and timing in that case shall be the same as that for the first List of Possible Arbitrators. After two Neutral Arbitrators have been disqualified, the Independent Administrator shall randomly select a Neutral Arbitrator from the other members on the panel who have not been named on prior Lists of Possible Arbitrators.
- g. If a Neutral Arbitrator should die, become incapacitated, or otherwise become unable or unwilling to proceed with the arbitration after appointment, the Independent Administrator shall serve the Parties with a new List of Possible Arbitrators and the selection process as set out in Rules 16 through 18 shall begin again.

**19. Acceptance by the Neutral Arbitrator**

- a. When a Neutral Arbitrator receives an offer from the Independent Administrator or the Parties, the Neutral Arbitrator must comply with any requirements under California Law, including Ethics Standard 12(d).
- b. The Independent Administrator may decline to appoint a Neutral Arbitrator if the Independent Administrator determines that the Neutral Arbitrator has not complied with the Ethics Standards. When a person agrees to act as a Neutral Arbitrator under Rule 18, the Independent Administrator shall send the person a copy of these Rules and a Letter Confirming Service. The Independent Administrator shall also serve the Parties with a copy of the Letter Confirming Service.
- c. If a person in the Independent Administrator's pool is appointed as the Neutral Arbitrator in a case and either served a notice saying no further work by the Parties or the attorneys would be accepted during the pendency of the case, or failed to serve the disclosure specified by Ethics Standard 12(b), the person shall be removed from the pool until the case is closed.

**20. Disclosure and Challenge**

- a. The person who has agreed to serve as Neutral Arbitrator shall make disclosures as required by law, including California Code of Civil Procedure Section 1281.9 or its successor statute and the Ethics Standards simultaneously upon the Parties and the Independent Administrator. Party responses, if any, shall be in accordance with the Code, with a copy served to the Independent Administrator. After the time for any response has passed, the Independent Administrator will deem that the Neutral Arbitrator has been appointed if no timely objection is received.
- b. The Neutral Arbitrator shall make all further disclosures as required by law, including California Code of Civil Procedure Section 1281.9 or its successor statute and the Ethics Standards simultaneously upon the Parties and the Independent Administrator. Party responses, if any, shall be in accordance with the code, with a copy served to the Independent Administrator.

**21. Postponement of Selection of Neutral Arbitrator**

- a. The Claimant(s) may obtain a single postponement of up to ninety (90) days for the appointment of the Neutral Arbitrator if the Independent Administrator receives a written request for postponement on or before the date that the response to the List of the Possible Arbitrators is due under Rule 16. Claimant(s) shall serve a copy of this request for postponement on the Respondent(s). Regardless of the number of Claimants, Claimant(s) is entitled to only a single ninety (90) day postponement of the appointment of the Neutral Arbitrator.
- b. If the Claimant(s) agrees in writing, Respondent(s) may obtain a single ninety (90) day postponement for the appointment of the Neutral Arbitrator. The Independent Administrator must receive this written request for postponement before the date that the response to the List of the Possible Arbitrators is due under Rule 16.c.
- c. There shall be only one postponement whether made by either Claimant(s) or Respondent(s) pursuant to this Rule in any arbitration.
- d. In arbitrations brought by Health Plan or KPIC, the member is entitled to the postponement and Health Plan or KPIC can obtain a postponement only with the member's permission.

**22. Selection of the Party Arbitrator**

- a. If the Parties are entitled to a Party Arbitrator and have not waived that right, the Claimant(s) and the Respondent(s) shall each select a Party Arbitrator and notify the Independent Administrator and the Neutral Arbitrator of the Party Arbitrator's name, address, and telephone and fax numbers. Each Party Arbitrator shall sign the Agreement to Serve, and submit it to the Independent Administrator before serving in the arbitration.
- b. If possible, the Parties should select the Party Arbitrators before the Arbitration Management Conference that is set forth in Rule 25. Any Party Arbitrator who is selected after the Arbitration Management Conference shall conform to any arbitration schedule established prior to his or her selection. Notwithstanding any other Rule, if a Party Arbitrator has not been selected, or has not signed the Agreement to serve, or does not attend a hearing, conference or meeting set by the Neutral Arbitrator of which the Party Arbitrator or Party had notice, the remaining Arbitrators may act in the absence of such Party Arbitrator.
- c. Regardless of the number of Claimants or Respondents, all of the Claimant(s) are entitled to only one Party Arbitrator and all of the Respondent(s) are entitled to only one Party Arbitrator.
- d. No Claimant, Respondent, or attorney may act as Party Arbitrator in an arbitration in which he or she is participating in any other manner.

**23. Appointment of Chairperson**

In cases involving more than one Arbitrator, the Neutral Arbitrator will chair the arbitration panel. Absent objection by any Party, the Neutral Arbitrator shall have the authority to decide all discovery and procedural matters, but may not decide dispositive issues without the Party Arbitrators. Dispositive issues shall be decided by a majority of the Arbitrators. The Neutral Arbitrator will also set the time and location of hearings and be

responsible for submitting all necessary forms to the Independent Administrator. Upon commencement of the Arbitration Hearing and thereafter, all substantive decisions shall be made by a majority of the Arbitrators or as otherwise agreed by them.

## **C. RULES FOR REGULAR PROCEDURES**

### **24. Deadline for Disposing of Arbitrations**

- a. Unless Rule 24.b, 24.c, or 33 applies, the Neutral Arbitrator shall serve an Award on the Parties and the Independent Administrator, or the arbitration shall be otherwise concluded, within eighteen (18) months of the Independent Administrator receiving the Demand for Arbitration and filing fee or granting the fee waiver. The Parties and Arbitrator are encouraged to complete the arbitration in less time than the maximums set forth in the Rules, if that is consistent with a just and fair result.
- b. If all Parties agree that the claim is a complex case and the Neutral Arbitrator agrees, the Neutral Arbitrator shall serve an Award on the Parties and the Independent Administrator, or the arbitration shall be otherwise concluded, within twenty-four (24) to thirty (30) months of the Independent Administrator receiving the Demand for Arbitration and filing fee or granting the fee waiver. Unrepresented Parties, counsel, and the Neutral Arbitrator shall sign and serve the Designation of Complex Arbitration Form upon the Independent Administrator.
- c. There may be some small number of extraordinary cases which cannot be disposed of within thirty (30) months, such as those where the damages or injuries cannot be ascertained within that time. If all the unrepresented Parties, counsel, and Neutral Arbitrator agree, the Neutral Arbitrator may select a later date for disposition of the case. Unrepresented Parties, counsel, and the Neutral Arbitrator shall sign and serve the Designation of Extraordinary Arbitration Form upon the Independent Administrator. This form will set forth the reason for this designation and the target disposition date.
- d. It is the Neutral Arbitrator's responsibility to set a hearing date and to ensure that the arbitration proceeds within the time limits set out in these Rules. Failure by the Parties or counsel to comply with this Rule may subject them to sanction. Failure by the Neutral Arbitrators to comply with this Rule may subject them to suspension or removal from the pool of Neutral Arbitrators. However, this Rule is not a basis to dismiss an arbitration or a claim. Nothing in this paragraph affects the remedies otherwise available under law for violation of any other Rule.

### **25. Arbitration Management Conference**

- a. The Neutral Arbitrator shall hold an Arbitration Management Conference with the attorneys representing the Parties, or the Claimant in pro per and the attorney(s) representing Respondent(s) within sixty (60) days of the date of the Letter Confirming Service of the Neutral Arbitrator. The Neutral Arbitrator shall give notice to the Parties of the time and location at least ten (10) days in advance. The Arbitration Management Conference may be conducted by telephone or by video conference if such facilities are available.
- b. The Neutral Arbitrator shall discuss, but is not limited to, the following topics:

- i. the status of the Parties, claims, and defenses;
  - ii. a realistic assessment of the case;
  - iii. any pending or intended motions;
  - iv. completed and intended discovery;
  - v. the procedures to be followed, including any written submissions the Neutral Arbitrator requires or permits; and
  - vi. if appropriate, whether the Parties have or will waive any Party Arbitrator.
- c. At the Arbitration Management Conference, the Arbitrator shall establish:
- i. the schedule for motions and the mandatory settlement meeting and
  - ii. the dates of the Arbitration Hearing. The Arbitrator and the Parties shall schedule the Arbitration Hearing for consecutive days if more than one day is necessary. If the Arbitrator permits post-Arbitration briefs, the dates for the Arbitration Hearing must be set early enough to ensure that it will be closed within the deadlines established in Rule 24.
- d. If any of the Parties is not represented by counsel, the Neutral Arbitrator should refer the Parties to Rule 54 and offer to explain the process to be followed. Parties who have questions about the Arbitration Hearing, use of motions, waivers, and costs should raise them at the Arbitration Management Conference.
- e. The Neutral Arbitrator shall record all deadlines established by the Neutral Arbitrator during the Arbitration Management Conference on the Arbitration Management Conference Form. The Neutral Arbitrator shall serve the Arbitration Management Conference Form on the Parties and the Independent Administrator within five (5) days of the Arbitration Management Conference. The Neutral Arbitrator shall also serve a copy of the Arbitration Management Conference Form on the Party Arbitrators if and when they are named.
- f. At any time after the Arbitration Management Conference, the Neutral Arbitrator may require, or the Parties may request, additional conferences to discuss administrative, procedural, or substantive matters and to assure that the case continues to move expeditiously. Neutral Arbitrators are encouraged to conduct such conferences by telephone or video conference if facilities are available.

**26. Mandatory Settlement Meeting**

- a. No later than six (6) months after the Arbitration Management Conference, attorneys representing the parties, or the claimant in pro per and the attorneys representing the respondents shall conduct a mandatory settlement meeting. Represented parties are not required to attend, but if they choose not to do so, either their attorneys must be fully authorized to settle the matter, or the parties not present must be immediately available by phone for consultation with their attorneys while the meeting is in



progress. The Parties shall jointly agree on the form these settlement discussions shall take, which may include a conference by telephone, a video-conference, an in-person meeting or any other format they shall agree upon. This Rule does not require that a neutral third party oversee the mandatory settlement meeting; nor does it preclude the presence of such a person. The Neutral Arbitrator shall not take part in the mandatory settlement meeting. Within five (5) days after the mandatory settlement meeting, the Parties and their counsel shall sign the Mandatory Settlement Meeting Form and serve a copy on the Independent Administrator to confirm that the meeting occurred. If the Parties have settled the claim, they shall give notice as required in Rule 40.

- b. This Rule sets a deadline for the Parties to conduct a mandatory settlement meeting. The Parties are encouraged to engage in settlement discussions at an earlier date.
- c. Section 998 of the California Code of Civil Procedure (Offers by a Party to Compromise) applies to arbitrations conducted under these Rules.

## **27. Discovery**

- a. Discovery may commence as soon as the Health Plan serves Claimant(s) with a copy of the Transmission Form, unless some Party objects in writing. If a Party objects, discovery may commence as soon as the Neutral Arbitrator is appointed. Discovery shall be conducted as if the matter were in California state court. Any extension of time for completion of discovery shall not affect the date of the Arbitration Hearing.
- b. The Parties should address problems stemming from the discovery process to the Neutral Arbitrator for rulings. The time for serving any discovery motions shall commence as required by the California Code of Civil Procedure or upon the appointment of the Neutral Arbitrator, whichever is later.
- c. If the Claimant(s) requests and at the Claimant's expense, Health Plan or the affiliated entities that are named as Respondent(s) shall serve a copy of that portion of Claimant's medical records requested on the Claimant(s) within thirty (30) days of Claimant's request.
- d. At the request of the Parties and as would be permitted in state court, the Neutral Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive or private information.

## **28. Postponements**

- a. Any postponement of dates other than that set out in Rule 21 shall be requested in writing from the Neutral Arbitrator if one has been appointed or from the Independent Administrator if the Neutral Arbitrator has not been appointed or has become incapacitated. The request shall set out good cause for the postponement and whether the other Party agrees. Postponements, absent extraordinary circumstances, shall not prevent the Arbitration Award from being served within the time periods specified in Rule 24. Failure of the parties to prepare for a scheduled hearing or to keep the hearing dates free from other commitments does not constitute extraordinary circumstances.

- b. Whenever a Party requests a postponement of an Arbitration Hearing, the request must be in the form of a written motion to the Neutral Arbitrator, with a copy served on the Parties. In addition,
  - i. The motion must state the reasons for the request.
  - ii. The Neutral Arbitrator must issue a written order that either denies or grants the motion for postponement, states who made the motion, and gives the reason for the decision. The order must be served on the parties and the Independent Administrator. If the Neutral Arbitrator grants the motion, the order must state the date to which the hearing has been postponed.
  - iii. If the motion for a postponement is granted, the Neutral Arbitrator has the discretion to enter an order requiring that the Neutral Arbitrator's costs and fees associated with the postponement of an Arbitration Hearing be paid by the party requesting the postponement.

**29. Failure to Appear**

- a. The arbitration may proceed in the absence of a Party, a Party's attorney, or a Party Arbitrator who, after due notice of the date, time, and location of the Arbitration Hearing, or any other conference or hearing, fails to be present and failed to obtain a postponement. If the date of the Arbitration Hearing has not been changed, service of the Arbitration Management Conference Form on a Party shall constitute due notice.
- b. An Award shall not be made solely on the default of a Party. The Arbitrator may require each Party who attends to submit such evidence as the Arbitrator requires for the making of an Award.

**30. Securing Witnesses for the Arbitration Hearing**

The Party's attorney, the Neutral Arbitrator, or other entity authorized by law may issue subpoenas for the attendance of witnesses or the production of documents. The Independent Administrator shall not.

**31. Close of Hearing or Proceeding**

- a. When the Parties have rested, the Neutral Arbitrator shall declare the Arbitration Hearing closed.
- b. The Neutral Arbitrator may defer the closing of the Arbitration Hearing until a date agreed upon by the Neutral Arbitrator and the Parties, to permit the Parties to submit post-Hearing papers. The date for the post-Hearing submissions shall not be more than fifteen (15) days after the Parties have rested. If post-Hearing papers are to be submitted, the Arbitration Hearing will be deemed closed on the date set for the submission. If a Party fails to submit the papers by the closing date, the Neutral Arbitrator need not accept or consider them.
- c. The time limit under Rule 37 for the Neutral Arbitrator to make the Award shall begin to run upon the closing of the Arbitration Hearing or proceeding. The late filing of a post-hearing paper shall not affect the deadline for making the Award.

## **32. Documents**

After making the Award, the Neutral Arbitrator has no obligation to preserve copies of the exhibits or documents the Neutral Arbitrator has previously received.

## **D. RULES FOR EXPEDITED PROCEDURES**

### **33. Expedited Procedures**

- a. Expedited Procedures are available in an arbitration where the Claimant(s) requires an Award in less time than that set out in Rule 24.a. The need for the Expedited Procedures shall be based upon any of the following:
  - i. a Claimant or member suffers from an illness or condition raising substantial medical doubt of survival until the time set for an Award according to Rule 24.a; or
  - ii. a Claimant or member seeks a determination that he or she is entitled to a drug or medical procedure that the Claimant or member has not yet received; or
  - iii. other good cause.
- b. The Claimant(s) and Respondent(s) may submit evidence, including declarations by physicians or others, to establish any of these criteria.
- c. If either the Independent Administrator or the Neutral Arbitrator decide that Expedited Procedures are required, the arbitration shall be disposed of within the time set out in that order. No extension of that time is allowed.
- d. Except when inconsistent with orders made by the Neutral Arbitrator to meet the deadline for the disposition of the case, the other Rules shall apply to cases with Expedited Procedures.

### **34. Seeking Expedited Procedures from the Independent Administrator**

- a. If Claimant(s) believes that Expedited Procedures are required and a Neutral Arbitrator has not yet been appointed, the Claimant(s) may serve a written request, with a brief statement of the reason for request for Expedited Procedures and the length of time in which an Award is required, on the Independent Administrator, with a copy to Respondent(s). Respondent(s) shall provide written opposition to the request for Expedited Procedures, if any, within seven (7) days of the date of the request. The Independent Administrator shall decide the request and inform the Parties of the decision no later than five (5) days after any opposition by Respondent(s) is due.
- b. Should the Independent Administrator determine that Expedited Procedures are necessary, the selection procedures set out in Section B of these Rules shall be followed except that no ninety (90) day continuance shall be allowed and the Independent Administrator shall require that the Neutral Arbitrator agree to render an Award within the period required.
- c. After the Neutral Arbitrator is appointed, he or she shall promptly confer with the Parties to decide what schedule, actions, or modifications of these Rules will be needed to meet the deadline. The Neutral Arbitrator shall issue any additional orders that are necessary to assure compliance with that deadline and serve the Independent Administrator with a copy of such

orders. The orders may require, by way of example and without limitation, shortening the length of time for discovery responses or motions.

**35. Seeking Expedited Procedures from the Neutral Arbitrator**

If a Neutral Arbitrator has been appointed, the Party seeking Expedited Procedures may, at any time, petition the Neutral Arbitrator to proceed on an expedited basis. If the Neutral Arbitrator issues an order to proceed on an expedited basis, he or she shall issue any additional orders that are necessary to assure compliance with that decision. The orders may require, by way of example and without limitation, shortening the length of time for discovery responses or motions. The Neutral Arbitrator shall serve a copy of any such orders on the Independent Administrator, including the date by which such Award shall be served.

**36. Telephonic Notice**

When Expedited Procedures apply, the Parties shall accept all notices, process, and other communications (other than the List of Possible Arbitrators) from the Independent Administrator and Arbitrator by telephone. The Independent Administrator and the Arbitrator shall promptly confirm any such oral notices, process, and other communications, in writing to the Parties.

**E. RULES ON AWARD AND ENFORCEMENT**

**37. Time of Award**

The Neutral Arbitrator shall serve the Award on the Parties and the Independent Administrator promptly. Unless otherwise specified by law, the Neutral Arbitrator shall serve the Award in Extraordinary and Complex cases, no later than thirty (30) business days after the closing of the Arbitration hearing, and in all other cases, no later than fifteen (15) business days after the date of the closing of the Arbitration Hearing. If post arbitration briefs are submitted, the Arbitration Hearing is closed on the date the briefs are due.

**38. Form of Award**

- a. A majority of the Arbitrators shall sign the Award. The Award shall specify the prevailing Party, the amount and terms of the relief, if any, and the reasons for the decision. In setting forth the reasons, the Award, or any decision deciding an arbitration, shall provide findings of fact and conclusions of law, consistent with California Code of Civil Procedure Section 437c(g) or Section 632. The reasons for the decision will not become part of the Award nor be admissible in any judicial proceeding to enforce or vacate the Award. The Arbitrator may use the Arbitration Award Form. The Neutral Arbitrator shall be responsible for preparing the written Award.
- b. As required by California regulation, all written decisions, except for those involving KPIC products or self-funded products, must contain the following language in bold, twelve (12) point type,  
  
"Nothing in this arbitration decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care."

**39. Delivery of the Award**

- a. The Neutral Arbitrator shall serve a copy of the Award and any decision by the Neutral Arbitrator to correct the Award on the Parties and Independent Administrator by mail.
- b. The Neutral Arbitrator shall inform the Independent Administrator of application to correct the Award.
- c. Respondent(s) shall redact the Award by eliminating the names of the enrollees, the plan, witnesses, providers, health plan employees, and health facilities.
- d. Respondent(s) shall serve the redacted Award on the Independent Administrator and Claimant(s). The redacted version of the Award will become part of the Neutral Arbitrator's file.
- e. In arbitrations brought by Health Plan or KPIC, Health Plan or KPIC shall serve the redacted Award.

**40. Notice after Settlement or Withdrawal**

- a. At any point in the proceedings, if the Parties reach a settlement, they shall promptly inform the Neutral Arbitrator and the Independent Administrator in writing. Upon receiving such notice, the Independent Administrator shall deem the arbitration terminated.
- b. If a Claimant decides to withdraw a demand, the Claimant or the Claimant's attorney shall serve a notice of withdrawal upon Respondent, the Neutral Arbitrator, and the Independent Administrator.
- c. Except in cases in which the Independent Administrator receives a decision from the Neutral Arbitrator, the Neutral Arbitrator's appointment is terminated on the date the Independent Administrator receives written notice under Rule 40.a or 40.b. No further Neutral Arbitrator will be appointed.

**41. Sanctions**

The Neutral Arbitrator may order appropriate sanctions for failure of any Party to comply with its obligations under any of these rules or applicable law. These sanctions may include any sanction available under applicable law, as well as payment of all or a portion of the other Party's expenses for its Party Arbitrator or the Neutral Arbitrator's fees and expenses.

**42. Release of Documents for Judicial Proceedings**

The Independent Administrator shall, upon the written request of and payment by a Party, furnish to the Party, at the Party's expense, copies of any papers, notices, process or other documents in the possession of the Independent Administrator that may be required in judicial proceedings relating to that Party's arbitration.

## **F. RULES OF ADMINISTRATION**

### **43. Counting of Days**

- a. Unless a Rule specifies otherwise, "days" mean calendar days. Thus, all days, including holidays, Saturdays and Sundays are to be counted when counting the number of days. In determining the date an action is required, the date of the event or document that triggers the action is not included, but the date by which the action must occur is included.
- b. If a Rule refers to "business days," federal holidays, Saturdays, and Sundays are excluded when counting the number of days.
- c. If the date on which some action is to be taken, or a notice, process, or other communication would otherwise be required to be sent or a period would otherwise expire, falls on a holiday, a Saturday, or a Sunday, the date is extended to the next succeeding business day.

### **44. No Limit on Immunity**

Nothing in these Rules limits any statutory or common law immunity that the Independent Administrator or Neutral Arbitrator may otherwise possess.

### **45. Neutral Arbitrator Fees**

- a. If the Neutral Arbitrator was selected from the List of Possible Arbitrators, the Neutral Arbitrator's compensation for an arbitration shall accord with the fees and terms sent out to the Parties by the Independent Administrator with the List of Possible Arbitrators.
- b. The Independent Administrator is not responsible for, or involved in the collection of, the Neutral Arbitrator's fees.

### **46. Expenses**

The expenses of witnesses for any Party shall be paid by the Party producing them. The fees and expenses of the Party Arbitrator shall be paid by the Party who selected that Party Arbitrator.

### **47. Forms**

The Parties and the Neutral Arbitrator may request blank copies of any forms mentioned in these Rules from the Independent Administrator.

### **48. Questionnaire**

- a. At the conclusion of the arbitration, the Neutral Arbitrator shall complete and timely return the arbitration questionnaire supplied by the Independent Administrator. This information may be used by the Independent Administrator and the Arbitration Oversight Board ("AOB") in evaluating the arbitration system.
- b. If the Independent Administrator received the Demand for Arbitration on or after January 1, 2003, at the conclusion of the arbitration, the Neutral Arbitrator shall inform the Independent Administrator of the total fee and the percentage of fee allocated to each party. This information will be used by the Independent Administrator to comply with the disclosure requirements of California law.

**49. Evaluation**

At the conclusion of the arbitration, each Party shall complete and timely return the evaluation form supplied by the Independent Administrator.

**50. Amendment of Rules**

- a. The AOB may amend these Rules in consultation with the Independent Administrator and Health Plan. The Rules in effect on the date the Independent Administrator receives the Demand for Arbitration will apply to that arbitration throughout unless the Parties agree in writing that another version of the Rules applies. The Parties shall serve a copy of that agreement on the Independent Administrator.
- b. If the relevant law changes or an event occurs which is not contemplated by these Rules, the Arbitration Oversight Board may adopt a new Rule(s) to deal adequately with that event. New Rule(s) shall apply to all pending arbitrations if the AOB deems such a change necessary notwithstanding Rule 50.a. Any such new Rule(s) shall be created in consultation with the Independent Administrator and Health Plan and shall not be inconsistent with existing Rules unless the Independent Administrator agrees to the change. The Independent Administrator shall serve all Parties and Arbitrators in pending arbitrations with a copy of any such new Rule(s) and it shall be binding upon the Parties and Arbitrators.
- c. In the event of an urgent condition that in the judgment of the Independent Administrator threatens the orderly administration of the arbitration system, with the concurrence of the Chair or Vice-Chair of the AOB, the Independent Administrator shall adopt such temporary rules as it deems necessary to preserve the orderly administration of the arbitration system.

**51. Conflict with Law**

If any of these Rules, or a modification of these Rules agreed on by the Parties, is discovered to be in conflict with a mandatory provision of applicable law, the provision of law will govern, and no other Rule will be affected.

**52. Acknowledgment of No Warranty**

The Independent Administrator makes no representation about, or warranty with respect to, the accuracy, or completeness of any information furnished or required to be furnished in any Application Form or with respect to the competence or training of any Neutral Arbitrator. Information is supplied to allow Parties to conduct their own inquiries.

**53. Public Reporting**

Annually, the Independent Administrator will report in a collective fashion the lengths of times it took to complete various tasks in the process of adjudicating the claims, how the arbitrations were disposed of, and the choices made by the Parties and Arbitrators. This report may be available to the public. The Independent Administrator will also post on its website disclosures required by statute or the Ethics Standards.

## 54. Legal Advice

While the Independent Administrator will try to answer questions about these Rules, it cannot give legal advice to Parties or their counsel or provide them with referrals. The following "Information for Claimants Who Do Not Have Attorneys" may answer some of the most commonly asked questions.

### If You Do Not Have An Attorney

#### **What are my responsibilities when proceeding without a lawyer?**

This handout is for people who represent themselves in arbitration without help from a lawyer. Lawyers say that a person who represents him or herself is acting *in propria persona* or "in pro per". The following information provides some facts and answers some questions most commonly asked by such persons. This handout does not replace the *Rules for Kaiser Member Arbitrations Administered by the Office of the Independent Administrator (Rules)*. Everyone is responsible for following the *Rules*.

If you represent yourself you must do all of the tasks that a lawyer would do, including:

- Understand and comply with the *Rules* governing Kaiser member arbitrations administered by the Office of the Independent Administrator (OIA),
- Learn the California law that applies in your case,
- Find and subpoena witnesses you need,
- Find, hire, and pay expert witnesses you need, and
- Write and deliver all documents that the *Rules*, California law, or the Neutral Arbitrator directs you to prepare.

Some of these tasks take time, are difficult, and have deadlines. We encourage people to get a lawyer to represent them.

#### **What is the Office of the Independent Administrator?**

The OIA administers the arbitration process used by Kaiser and its members. The OIA is neutral. It is not a part of Kaiser Permanente. The *Rules* and California law control the arbitrations. If you represent yourself, the OIA will tell you what the *Rules* mean. However, the OIA cannot advise you on how the *Rules* might affect your specific case. Neither the OIA nor the neutral arbitrator can give you legal advice or help you find an expert witness. If you have questions about the *Rules*, call the OIA at (213) 637-9847 or visit the website at [www.oia-kaiserarb.com](http://www.oia-kaiserarb.com).

#### **What is arbitration?**

Arbitration is a legal proceeding. It is similar to a case filed in court. At the arbitration hearing, you and the other side present witnesses, including medical experts, and other evidence. Unlike most trials in court, there is no jury. Arbitrators hear the evidence and act as the judges. Arbitrators decide cases based on the evidence presented by both sides and the law. The Arbitrator's decision is final, binding, and can be enforced in court. Only rarely can a court overturn the arbitrator's decision.



### **Are arbitration and mediation different?**

Yes. Arbitration is a proceeding where evidence is presented similar to a case in court. In mediation, parties solve their dispute with the help of a neutral person called the "mediator", who tries to help the parties reach an agreement and end their dispute. Mediation is an attempt to settle the dispute voluntarily. A mediator cannot force the parties to accept a decision.

### **What is discovery?**

Before the arbitration hearing, all parties have the right to conduct discovery. This means both sides can send written requests for information, usually in the form of Requests for Admissions, Interrogatories, and Requests for Production of Documents. Both sides can also issue subpoenas for records and set depositions. You will be responsible for following the procedures in the California Code of Civil Procedure or any discovery procedure that the arbitrator may set up.

### **Is a medical expert always necessary to prove a claim of medical malpractice?**

Almost always. Under California law, a medical expert's testimony is almost always needed to prove medical malpractice. This is true both in arbitration and in court. If you do not have a medical expert, you will probably lose the case. Neither the OIA nor the neutral arbitrator can help you find or hire a medical expert.

### **Are any other expert witnesses needed?**

Sometimes. For example, if you are asking for lost wages or future damages, you may need an economist or other financial expert to testify. Other experts may be needed depending on the nature of your claims.

### **May I ask a friend or relative to assist me in the case?**

Yes, an unpaid friend or family member may accompany you and assist you, if in the judgment of the neutral arbitrator your personal circumstances warrant such assistance. This person may not represent you. As in court, you may only be represented by yourself or a lawyer.

### **What is a party arbitrator and when are party arbitrators used?**

Party arbitrators are used when the claimant or Kaiser prefer to have three arbitrators decide the case rather than the neutral arbitrator alone. If you claim more than \$200,000 in damages, both sides have the right to select a party arbitrator. If you choose to have a party arbitrator, you will have to find and pay the party arbitrator. You must also pay one-half of the neutral arbitrator's fees, unless you qualify for a fee waiver under Rule 13.

If both sides give up their right to a party arbitrator, a single neutral arbitrator will hear your case. The other side will pay all of the neutral arbitrator's fees and expenses if you sign the Waiver of Objection to Payment of Fees and the Waiver of Party Arbitrator – Claimants Forms. For more information see Rules 13, 14, 15, and 22. Having your case heard by a single neutral arbitrator does not limit the amount of damages you can claim.

Most Kaiser arbitrations are decided by a single neutral arbitrator.

### **What is an *ex parte* communication ?**

*Ex parte* communication occurs when one party communicates with the neutral arbitrator (in writing, by telephone, or in person) without giving the other side a chance to participate or respond. *Ex parte* communication is prohibited unless it is about the time or place of a hearing or conference. If you need to contact the neutral arbitrator for any other reason, write a letter to the neutral arbitrator and send a copy of the letter to the other side. You may also ask for a conference call with the neutral arbitrator and the other side.

### **What is summary judgment and why is it important to my claim?**

Kaiser Permanente may make a motion for summary judgment. This means they argue that there is no dispute about the facts. They also argue they deserve to win under the law. If this happens, you must prepare your position in writing and send it to the neutral arbitrator and the other side before the deadline. If you fail to do this, the neutral arbitrator will probably grant the motion and your case will be over. If Kaiser Permanente has included an expert declaration, you probably need to do the same. You can also take part in the hearing on the motion in person or by phone. If the neutral arbitrator grants a motion for summary judgment, the case is over.

### **Are there other resources to help people who represent themselves?**

There are books written for people who represent themselves in legal proceedings. Please check your local library or bookstore. If you need help finding a lawyer, call the State Bar and/or your County Bar Association.

If you have any questions, please call the OIA at (213) 637-9847. Copies of the *Rules* for Kaiser member arbitrations, forms, and other helpful items can also be found at the OIA website at [www.oia-kaiserarb.com](http://www.oia-kaiserarb.com)

**EXHIBIT "3"**

[Print](#) | [Close Window](#)

**Subject:** Noval v. Kaiser

**From:** "robertrees" <robertreeslaw@att.net>

**Date:** Sun, Feb 24, 2013 7:23 am

**To:** "Casey T. Young Esq." <ctyoung@ctylaw.com>, <rysolmayor@cktfmlaw.com>

**Cc:** "Marcella Bell" <mbell@ola-kaiserarb.com>

**Attach:** NOVAL RULING.pdf  
NOVAL STIP.pdf

Dear Counsel:

I enclose a Stipulation declaring this case to be complex. Obviously, given the substantial joinder issues, this case qualifies in my opinion. However, OIA rules require counsel to sign the stipulation. Please review the document and if you agree, please sign and return the signature page to my office at your earliest convenience.

I also enclose the Ruling of Arbitrator in the above matter. If anyone has any questions or would like to discuss it, please leave me an e-mail with suggested times for a telephone conference.

Robert A. Rees  
Arbitrator

Robert A. Rees  
Rees Law Firm P.C.  
1925 Century Park East, Suite 2000  
Los Angeles, California 90067  
Telephone: (310) 277-7071  
Facsimile: (310) 277-7067

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Thank you.

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## Designation of Complex Arbitration

**Instructions:** Designation of an arbitration as complex is optional and should occur rarely. If an arbitration is designated Complex, the Neutral Arbitrator must complete this form. In addition, all Parties and their counsel must sign this form. The Neutral Arbitrator must return this form to the Independent Administrator within five days of the Arbitration Management Conference or any subsequent designation of the arbitration as Complex. See Arbitration Rule 24.b. Return this form to

Office of the Independent Administrator  
3580 Wilshire Boulevard, Suite 2020  
Los Angeles, California 90010  
Fax: 213-637-8658

Name of Arbitration Noval v. Kaiser Arbitration Number 11585

Date Independent Administrator received  
Filing Fee or waived Filing Fee \_\_\_\_\_

Range for Independent Administrator to  
receive Arbitration Award if Complex \_\_\_\_\_

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Date of Arbitration Management Conference None

Deadline for hearing substantive motions None

Deadline for Mandatory Settlement Meeting None

Date(s) Arbitration Hearing will occur None

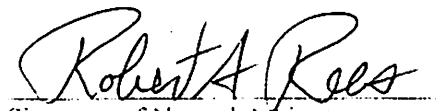
Deadline for Independent Administrator to  
receive Arbitration Award None

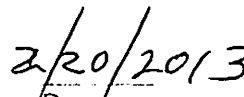
This arbitration is complex and requires more than eighteen months to be completed for the following reasons: Not all heirs have joined or been joined in wrongful death portion of case.

Any further notes: Claimant has 10 days to file amended demand to cure defects.

Page 1 of 2

Designation of Complex Arbitration  
Page 2 of 2

  
Signature of Neutral Arbitrator

  
Date

I agree that this is a complex case and requires more than eighteen months to be decided.

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Claimant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Claimant's Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Respondent's Counsel

\_\_\_\_\_  
Date