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Personal Representative of the Estate of Victorino Noval

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 02 2012

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

HECTOR A. NOVAL, as Personal Representative
of the Estate of VICTORINO NOVAL;

Plaintiff,

vs.

KAISER FOUNDATION HEALTH PLAN, INC.;
KAISER FOUNDATION HOSPITALS;
SOUTHERN CALIFORNIA PERMANENTE
MEDICAL GROUP;
RICHARD MARK BRADBURNE;
ANTHONY TAPIA;
DAN WILSON; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **RIC 1201608**

COMPLAINT FOR DAMAGES FOR:

1. **WILLFUL MISCONDUCT;**
2. **NEGLIGENCE;**
3. **ELDER ABUSE;**
4. **FRAUDULENT CONCEALMENT;**
5. **CONSTRUCTIVE FRAUD;**
6. **BREACH OF FIDUCIARY DUTY;**
7. **FRAUD - FALSE PROMISE;**
8. **MEDICAL BATTERY;**
9. **LACK OF INFORMED CONSENT;**
10. **WRONGFUL DEATH.**

DEMAND FOR JURY TRIAL

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I.

PARTIES

1. Plaintiff Hector A. Noval ("PLAINTIFF") brings this action on behalf of deceased Victorino Noval ("DECEDENT"). PLAINTIFF is DECEDENT's son, and he brings this action under the provisions of Code of Civil Procedure §377.60 which provides that PLAINTIFF may bring this action on behalf of the DECEDENT's heirs: "A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by ...the decedent's children..." There are approximately four heirs of the DECEDENT. PLAINTIFF is one of them. As an heir of DECEDENT, PLAINTIFF also has standing to bring this action pursuant to Welf. & Inst. Code §15657 et seq. There is a probate proceeding in the San Bernardino County Superior Court, case number CIVVS 1000 489, and PLAINTIFF, at hearing, obtained the consent of the Presiding Judge, Honorable J. Michael Welch, to file this Complaint and assert the causes of action herein.

2. Defendant Kaiser Foundation Health Plan, Inc. is a corporation or business entity of unknown form, doing business in the County of Riverside, California, at 10800 Magnolia Avenue, Riverside, California 92505, which is the location wherein the injuries, death, and damages occurred.

3. Defendant Kaiser Foundation Hospitals is a corporation or business entity of unknown form, doing business in the County of Riverside, California, at 10800 Magnolia Avenue, Riverside, California 92505.

4. Defendant Southern California Permanente Group is a corporation or business entity of unknown form, doing business in the County of Riverside, California, at 10800 Magnolia Avenue, Riverside, California 92505.

5. Defendants Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, Southern California Permanente Medical Group, and DOES 1 through 5 are herein collectively referred to as "KAISER."

1 6. Defendant Richard Mark Bradburne is an individual who upon information and
2 belief is licensed as a physician in the State of California and does business in the County of Riverside at
3 the facility owned and operated by KAISER at 10800 Magnolia Avenue, Riverside, California 92505.
4 Defendant Richard Mark Bradburne and DOES 6 through 10 are collectively referred to herein as
5 "BRADBURNE."

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7 7. Defendant Anthony Tapia is an individual who upon information and belief is
8 licensed as a social worker in the State of California and does business in the County of Riverside at the
9 facility owned and operated by KAISER at 10800 Magnolia Avenue, Riverside, California 92505.
10 Defendant Anthony Tapia and DOES 11 through 15 are collectively referred to herein as "TAPIA."

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12 8. Defendant Dan Wilson is an individual who upon information and belief is
13 licensed as a social worker and/or bioethics director and/or medical consultant in the State of California
14 and does business in the County of Riverside at the facility owned and operated by KAISER at 10800
15 Magnolia Avenue, Riverside, California 92505. Defendant Dan Wilson and DOES 16 through 20 are
16 collectively referred to herein as "WILSON."

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18 9. PLAINTIFF is ignorant of the names and capacities of DOES 1 though 50 and
19 sues them as DOES 1 through 50, inclusive. PLAINTIFF will amend this action to allege these DOE
20 Defendants' names and capacities when ascertained. Each of the defendants herein is responsible in some
21 manner for the occurrences, injuries, and damages herein, and that the damages were directly and
22 proximately caused by these defendants' acts and omissions. Each defendant herein was the agent of each
23 of the remaining defendants, and in doing the things alleged herein were acting within the course and
24 scope of their agency.

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26 10. All defendants collectively, including KAISER, BRADBURNE, TAPIA,
27 WILSON, and DOES 21-50 are referred to herein as "DEFENDANTS."

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II.

STATEMENT OF FACTS

11. DECEDENT was involuntarily admitted to KAISER's intensive care unit on April 28, 2010. He was placed on a mechanical ventilator and treated for "aspiration pneumonia." He was sedated for comfort. He was 78 years-old with early stages Parkinson's Disease and Chronic Obstructive Pulmonary Disease ("COPD"). Before hospitalization, he lived at his own home, drove his own vehicle, and performed his own activities of daily living. He was worth \$60 Million and had annual income of \$3 Million. He made investments and controlled his finances. He suffered from no neurological deficiencies. He did not have dementia or diminished capacity. He functioned independent of others. He was in no way nearing death, an irreversible coma, or a persistent vegetative state. Upon hospitalization, he only required temporary oxygen support while the pneumonia infection in his lungs cleared and he regained his strength. His condition was no more serious than that.

12. DECEDENT had four adult children, PLAINTIFF, Victor Noval, Lourdes Frost ("FROST"), and Tania Noval ("NOVAL"). FROST and NOVAL desired DECEDENT's death to collect their multi-million dollar inheritances. NOVAL had a pre-existing relationship with TAPIA. FROST and NOVAL used TAPIA's resources among DEFENDANTS to end DECEDENT's life on May 7, 2010. The facts follow:

13. On April 28, FROST and NOVAL claimed, falsely and fraudulently, to DEFENDANTS, including TAPIA, that DECEDENT had "advanced" Parkinson's Disease and had been "getting worse" over the past "six months," that he "would not want to be hooked to a machine like ventilator," even if just temporarily, and that "he had expressed this to [his] daughter both when he is well, and when not so well." FROST and NOVAL told DEFENDANTS that DECEDENT "would not [have] wanted to be resuscitated if he is to pass away...he would want to die peacefully if that was to happen." Each of these statements were untrue. DEFENDANTS performed no diligence into their veracity and accepted them as true.

1 14. That day, PLAINTIFF expressed his desire that DECEDENT be transported to
2 Cedar Sinai in Beverly Hills, California for treatment and that he not be treated at KAISER.
3 DEFENDANTS acknowledged these desires but refused to honor them.
4

5 15. May 3, FROST filed with KAISER a copy of DECEDENT's Durable Power of
6 Attorney for Health Care, dated July 7, 1999 ("DPOA"). DECEDENT was sedated for comfort.
7 Therefore, he temporarily lacked capacity, and his DPOA controlled.
8

9 16. PLAINTIFF and FROST were named "attorneys in fact" and designated as "joint
10 agents" in DECEDENT's DPOA to make all of DECEDENT's health care decisions. Pursuant to Prob.
11 Code §4202(b), health care decisions required the unanimous consent of both PLAINTIFF and FROST,
12 and DEFENDANTS could not alter or change DECEDENT's treatment without the unanimous consent
13 of both PLAINTIFF and FROST. DEFENDANTS must have ascertained DECEDENT's health care
14 decisions from these joint agents, and must have obtained informed consent exclusively from them. They
15 were also required, pursuant to Prob. Code §4733 et seq., to transfer DECEDENT to Cedar Sinai per
16 PLAINTIFF's request or explain to PLAINTIFF their reasons for not doing so and provide PLAINTIFF
17 sufficient time to file a petition in court for relief from this decision.
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19 17. DEFENDANTS did none of this. They never disclosed the DPOA to PLAINTIFF
20 or advised him of his rights and responsibilities therein. Neither did FROST or NOVAL. PLAINTIFF
21 was never made aware of the DPOA or his rights and responsibilities therein.
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23 18. Same day, May 3, FROST met with BRADBURNE and TAPIA and claimed,
24 falsely and fraudulently, again, that DECEDENT had a history of "advanced" Parkinson's Disease and
25 that he had "declined functionally" over the past "six months," suffering from "problems with gait and
26 balance." These false and fraudulent statements were designed solely to convince DEFENDANTS to
27 withdrawal treatment and end DECEDENT's life. DEFENDANTS discussed with FROST, and without
28 PLAINTIFF, DECEDENT's quality of life, medical history, ventilator, and a possible tracheotomy.

1 DEFENDANTS knew of the DPOA and had PLAINTIFF's name, telephone number, and address, and
2 they had access to several family members, including FROST, who could have easily contacted him to
3 participate in the meeting. DEFENDANTS also knew that PLAINTIFF had appeared several times at
4 KAISER and desired to participate in DECEDENT's health care decisions and control them to the extent
5 possible. Yet DEFENDANTS proceeded with this meeting with FROST, alone, and never attempted to
6 contact PLAINTIFF.

7
8 19. Had DEFENDANTS simply contacted PLAINTIFF, they would have discovered
9 the truth of DECEDENT's health conditions and that PLAINTIFF was unaware of the DPOA or his
10 rights and responsibilities therein. Disclosing the DPOA to PLAINTIFF would have given him the
11 authority he was seeking to transfer DECEDENT to Cedar Sinai and/or petition the court for such relief
12 pursuant to Prob. Code §§4733 et seq. One single telephone call to PLAINTIFF would have resolved all
13 of these conflicts. DEFENDANTS failed to perform any such minimal or related due care.

14
15 20. By virtue of DECEDENT's health, on May 3, DEFENDANTS, including
16 BRADBURNE, prescribed 1-2 more weeks of continued aggressive treatment for DECEDENT.
17 PLAINTIFF was at KAISER at the time and again requested that DEFENDANTS transport DECEDENT
18 to Cedar Sinai or a like-facility. DEFENDANTS refused. They never disclosed the DPOA or discussed it
19 with PLAINTIFF, and PLAINTIFF went unaware of his rights in the matter.

20
21 21. May 4, FROST and NOVAL met with TAPIA and told him that "the entire
22 family" desired terminal extubation, i.e. withdrawal of treatment and death. This was a false and
23 fraudulent misrepresentation. "The entire family" did not desire terminal extubation. FROST and
24 NOVAL instructed TAPIA to contact a Catholic Priest to visit NOVAL and read his last rights. TAPIA
25 did so. TAPIA then communicated to DEFENDANTS that the "family" desired terminal extubation. No
26 one contacted PLAINTIFF or informed him that any of this was taking place. PLAINTIFF was unaware
27 of all of this.

1 22. May 5, PLAINTIFF entered KAISER, and TAPIA appeared with security at the
2 entrance and had PLAINTIFF searched by security for weapons. No explanation was given. TAPIA then
3 took PLAINTIFF to a conference room and told him that DECEDENT was going to be terminally
4 extubated the following day. He gave PLAINTIFF no explanation for the change in treatment and didn't
5 discuss the DPOA with PLAINTIFF or advise PLAINTIFF that he was a "joint agent" for health care
6 decisions and had the authority to prevent, delay, or postpone it. PLAINTIFF requested terminal
7 extubation be delayed and again requested DECEDENT be transported to Cedar Sinai or a like-facility.
8 TAPIA tried convincing PLAINTIFF otherwise but ultimately agreed to communicate his request to
9 delay extubation and said he would "continue to follow up" with PLAINTIFF and have "continued
10 conversations" with him "regarding treatment and terminal extubation." This was PLAINTIFF's only
11 conversation with TAPIA regarding treatment and extubation. They never spoke again despite TAPIA's
12 promise.

13
14 23. PLAINTIFF left and retained counsel.

15
16 24. TAPIA recorded in DECEDENT's medical file that "the entire family is in
17 agreement with terminal extubation except now [PLAINTIFF] showed up today and is causing conflict."
18 He also recorded that PLAINTIFF "had history of substance abuse and paranoid personality." Neither
19 statement was true, and neither was discussed with PLAINTIFF. TAPIA wrote them in the record after
20 hearing them from FROST and NOVAL and without performing any diligence or due care into their
21 veracity.

22
23 25. TAPIA then spread these misstatements to DEFENDANTS, including
24 BRADBURNE, who wrote in DECEDENT's medical record: "family discussion, all siblings except one
25 son [PLAINTIFF] and wife are in agreement [regarding terminal extubation]...the son in disagreement
26 [PLAINTIFF] is a habitual drug abuser/addict and his judgments and motives are likely not sound in the
27 context of acting as a surrogate decision maker." One single telephone call to PLAINTIFF or related
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1 effort would have cleared the matter. Yet no DEFENDANT sought to communicate directly with
2 PLAINTIFF. He was unaware these allegations were being made about him.

3
4 26. BRADBURNE has since apologized for the medical record, stating that TAPIA
5 "had informed me at some point that this information [about PLAINTIFF] had been alleged." "That is not
6 a fair statement actually [about PLAINTIFF]." "I'm making a statement of fact there and that's not true."
7 "The keyword that's left out of that sentence is 'alleged.'" BRADBURNE said he meant for the medical
8 record to illustrate that "there was a true conflict here among the survivors of [DECEDENT]," that "they
9 [the family] were deeply conflicted on how to proceed," and that he had "to help resolve - - resolve it
10 somehow." He said "frankly, I regret writing that that way." "These were allegations that were being
11 made by others." "I'm simply saying, my gosh, this is going on, we've got to sort this out." Neither
12 BRADBURNE nor any other DEFENDANT performed any reasonable diligence or due care into this
13 "true conflict" or performed any reasonable diligence or due care to "sort this out."

14
15 27. PLAINTIFF's retained counsel called a meeting that evening, May 5, with
16 FROST and NOVAL to discuss DECEDENT's health care. When FROST and NOVAL arrived, they
17 produced a purported Will and a purported Trust. No DPOA. They told PLAINTIFF and counsel that the
18 Will and Trust were "the only documents that existed" and acted as if they didn't know what a DPOA or
19 Healthcare Directive was. They told PLAINTIFF to stop complaining about DECEDENT's death
20 because he'd inherit millions of dollars. They said, nonetheless, that DECEDENT would have wanted
21 PLAINTIFF to participate in his end-of-life decisions, and they represented that they would allow
22 PLAINTIFF to do so. PLAINTIFF and counsel demanded that no terminal extubation take place without
23 PLAINTIFF's knowledge and consent. They also demanded, when reasonable, that DECEDENT be
24 taken from sedation to communicate with his family and make his own health care decisions, and that,
25 when reasonable, he be transferred to Cedar Sinai or a like-facility. FROST and NOVAL agreed to honor
26 these demands. This was PLAINTIFF's and counsel's last communication with FROST and/or NOVAL
27 before DECEDENT's death.

1 28. May 6, FROST and NOVAL met with DEFENDANTS. They did not tell
2 DEFENDANTS that they met with PLAINTIFF and his counsel the evening before and promised to
3 include PLAINTIFF in the health care decisions and that they had promised to postpone any terminal
4 extubation. Instead, they told DEFENDANTS that the "family continues to believe [DECEDENT] at this
5 time would want to be extubated" and that PLAINTIFF had "threatened violence" the evening before and
6 that they were "afraid" of him. These were false and fraudulent misrepresentations designed solely to
7 discredit and disparage PLAINTIFF and convince DEFENDANTS to terminally extubate DECEDENT
8 pursuant to their instructions. KAISER medical records state "S/W Kathy charge R.N. re [PLAINTIFF]'s
9 threats against family last evening. Will follow," meaning that DEFENDANTS knew they had the
10 obligation to verify this alleged threat of violence and that they intended to do so. Yet no DEFENDANT
11 ever did. Had any of them made one single telephone call to PLAINTIFF or related effort, they would
12 have discovered the allegations of violence were untrue, that PLAINTIFF had retained counsel, and that
13 FROST and NOVAL were committing egregious fraud and fraudulent concealment to accomplish their
14 father's death.

15
16 29. Later on May 6, DEFENDANTS referred this "true conflict" to WILSON, who
17 was a "bioethics director" and/or on the "bioethics committee" at KAISER, to perform an analysis into
18 how to handle DECEDENT's health care going forward. WILSON interviewed FROST and NOVAL
19 about the allegations of violence and concluded PLAINTIFF was in a "clearly impaired condition" and
20 that KAISER should proceed with terminal extubation at the desires of "joint agent [FROST] and the
21 remaining family members." WILSON never met PLAINTIFF, communicated with him, or even reach
22 out to him in any way, and DEFENDANTS never informed PLAINTIFF of WILSON's involvement or
23 conclusions, which alone is a violation of Prob. Code §§4731, et seq. PLAINTIFF was not aware that any
24 of this was taking place. PLAINTIFF believed, instead, from his discussion with TAPIA on May 5, that
25 KAISER would communicate with him before terminal extubation, and from his discussion with FROST
26 and NOVAL on the evening of May 5, that FROST and NOVAL would not seek terminal extubation
27 without obtaining PLAINTIFF's expressed consent beforehand.

1 30. Still later on May 6, FROST told TAPIA that she was traveling to a meeting with
2 PLAINTIFF and his counsel and that the family “plans to move forward with extubation [the next day].”
3 This was a false and fraudulent misrepresentation. There was no such meeting ever scheduled with
4 PLAINTIFF and his counsel, and PLAINTIFF was never in agreement with extubation. TAPIA did
5 nothing with this second-hand information that PLAINTIFF now had counsel, and instead told
6 BRADBURNE that PLAINTIFF now agreed with extubation. He performed no diligence or due care into
7 the truth. One single telephone call or related effort to PLAINTIFF would have proven otherwise and
8 ended FROST’s and NOVAL’s fraud.

9
10 31. May 6, DECEDENT had material improvement in his health condition. His
11 oxygen support was lowered and his x-rays showed the clearing of his lungs. BRADBURNE noted
12 “condition has improved some in the past 2 days.” Also, “it is possible that [DECEDENT] may sustain
13 the task of breathing if the mechanical ventilator is withdrawn.” Also, “currently, [he] does not meet the
14 ordinary criteria for extubation.” BRADBURNE never communicated any of this to PLAINTIFF. Yet,
15 because of TAPIA’s statement to BRADBURNE, BRADBURNE wrote in the medical file “daughter
16 (Lourdes) and son (Hector) [PLAINTIFF] are now in agreement that the current intensity of care is in
17 excess of patient’s preferences” and that “all agree that treatments capable only of maintaining him in this
18 [current] condition would not be consistent with his wishes.” This was not true. PLAINTIFF did not agree
19 to any of this. BRADBURNE scheduled extubation for the following day, May 7 at 12:45 p.m.
20 PLAINTIFF was not aware that any of this was taking place. No one, including DEFENDANTS, ever
21 contacted PLAINTIFF about this terminal extubation.

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23 32. In his duly sworn deposition, BRADBURNE was asked if terminal extubation
24 could have been postponed. He said “ABSOLUTELY.” He said that if anyone, including PLAINTIFF,
25 sought postponement, he would have done so. When asked how long he would have postponed
26 extubation, he said “NOW TILL THE COWS COME HOME.”

1 33. On May 7, just prior to extubation at 12:45 p.m., BRADBURNE advised FROST
2 and NOVAL that DECEDENT had "improved further since yesterday." By that time, since arriving on
3 April 28, DECEDENT had overcome his pneumonia and lung-infection, and his body temperature was a
4 normal 98.6. His mechanical ventilator had been replaced with a "CPAP mask," which meant there were
5 no tubes, just a mask over his mouth and nose. He was maintaining healthy oxygenation (95-97%) with
6 50% less oxygen support. His heart rate was normal, his blood pressure was stable, the chest x-rays of his
7 lungs were showing improvement, his respiratory secretions were clearing, his white blood cells were
8 down (showing no infection), and he was in no distress. In addition, no neurological damage had taken
9 place. He was receiving 90% less morphine than when he arrived, and he could "awake to voice with eye
10 opening and eye contact for more than 10 seconds." Neither BRADBURNE, nor any other
11 DEFENDANT, communicated any of this to PLAINTIFF. BRADBURNE gave FROST and NOVAL the
12 opportunity to postpone extubation at that moment. They declined.

13
14 34. BRADBURNE then tasked WILSON with ensuring PLAINTIFF was aware of
15 terminal extubation and that he was in favor of it. WILSON never contacted PLAINTIFF. Instead, he
16 spoke to FROST, and according to his note in DECEDENT's medical file, "[FROST] confirmed that her
17 brother Hector [PLAINTIFF] has agreed to follow family wishes regarding extubation and has decided
18 not to be present at actual event." BRADBURNE has admitted that this note by WILSON was his sole
19 basis for believing PLAINTIFF knew of the terminal extubation and was in agreement with it. In his
20 sworn deposition, BRADBURNE stated "I asked [WILSON] to be sure that everybody was in
21 agreement" and "he carried that out for me and documented it [referring to WILSON's note]."
22 BRADBURNE said he believed PLAINTIFF was in favor with extubation because "that's what I was led
23 to believe [by what FROST told WILSON]," and that "if you want to stipulate somebody lied to me or
24 misrepresented the facts" then "go ahead." That's exactly what happened. FROST lied and
25 misrepresented the facts, and no DEFENDANT performed any diligence or due care into the matter.

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27 35. BRADBURNE then admitted in his sworn deposition:
28

1 "If I knew that there was still a disagreement among the agents at that point, yes, I thing I
2 would have said, you know, we need to meet again and sort this out. We can't proceed. I
3 want everybody to agree that is concerned, not just [one of] the agents."

4
5 "I think in my opinion they were no different than any other family who was confronting
6 this kind of difficult decision and they were only concerned about the welfare of their
7 father and they'd had an honest disagreement about it, about what he would want."

8
9 "So if they'd come to me at the moment we were about to do it [extubation] and said, let's
10 stop, we'd stop. If they'd come to me after we'd done it and he [DECEDENT] was still
11 breathing, we would have put the tube back in place. And we would have continued on
12 [with aggressive treatment]."

13
14 36. Post extubation, between 12:45 p.m. and 4:00 p.m., DECEDENT's "CPAP mask"
15 was replaced with a "simple mask" providing 85% less oxygen (6 liters per minute). This evidenced even
16 further improvement. DECEDENT maintained spontaneous breathing and satisfactory oxygen saturation
17 (93-97%) on this "simple mask." BRADBURNE gave FROST and NOVAL the opportunity to postpone
18 extubation at this point. FROST and NOVAL declined postponement. DEFENDANTS never gave
19 PLAINTIFF this opportunity or otherwise communicated with him. At 3:00 p.m., BRADBURNE raised
20 DECEDENT's morphine four-fold to 2 milligrams per hour to quicken his death, and at 4:00 p.m., he
21 effectively ended oxygen support (by administering only 1 liter per minute). At that point, and only at that
22 point, DECEDENT ceased spontaneous breathing and lost satisfactory oxygen saturation. He stopped
23 breathing and suffocated to death. He was pronounced dead at 5:25 p.m., after 85 minutes fighting to
24 survive with effectively no oxygen and heavily sedated.

25
26 37. PLAINTIFF appeared at KAISER later that evening to discover DECEDENT had
27 died. No one told him any terminal extubation had taken place. FROST and NOVAL told him that
28 DEFENDENTS had done all they could and that DECEDENT had passed away in spite of active

1 treatment, not because of any withdrawal of treatment or terminal extubation. At that point there was no
2 reason to believe any wrongdoing had taken place. PLAINTIFF had no knowledge of the DPOA, no
3 knowledge of the allegations of FROST and NOVAL to DEFENDANTS, and no knowledge of
4 DEFENDANTS withdrawal of treatment and terminal extubation. He wasn't even aware of
5 DECEDENT's material improvement over the final days of his hospitalization. No one had
6 communicated any of this to him. The only communications he received were from FROST and NOVAL
7 representing that DECEDENT was gravely and terminally ill, that he was in agony, and that there was no
8 likelihood of survival.

9
10 38. PLAINTIFF did not discover the DPOA until approximately February 15, 2011
11 after counsel for FROST and NOVAL produced it with other estate planning documents FROST and
12 NOVAL had been concealing previously. Only then did PLAINTIFF discover his rights and
13 responsibilities relating to DECEDENT's health care. Thereafter, he ordered the KAISER medical
14 records and discovered the facts set forth above.

15
16 39. To the matter of DEFENDANTS' duty to communicate with joint agents under a
17 patient's DPOA, both BRADBURNE and TAPIA admitted in their duly sworn depositions that
18 DEFENDANTS' policy is to do all that is necessary to inform healthcare agents of their rights and
19 responsibilities under a DPOA. They described past incidents wherein they would even search distant
20 states and foreign countries for healthcare agents and would even reach out to healthcare agents through
21 intermediaries and agents-of-the-agent. They testified with no doubt that DEFENDANTS would go to
22 great lengths to communicate with healthcare agents about their rights and responsibilities under a DPOA.
23 It's that critical to a patient's care. Yet in the instant matter, DEFENDANTS knew PLAINTIFF, had his
24 contact information, spoke to him and/or his family members multiple times, and had every opportunity
25 to communicate with PLAINTIFF about the DPOA and his rights and responsibilities therein, and they
26 failed to perform even minimal diligence and due care into doing so. They undoubtedly wanted to believe
27 FROST and NOVAL and "buried their heads in the sand." This directly and legally caused the death of a
28 relatively healthy, wealthy man with many more years left to live and love.

1 III.

2 **FIRST CAUSE OF ACTION**

3 *(Willful Misconduct v. all DEFENDANTS)*

4 40. PLAINTIFF re-alleges and incorporates by reference the allegations contained in
5 Paragraphs 1 through 39.

6
7 41. During the period of their care of DECEDENT, each of the DEFENDANTS knew
8 or should have known the perils posed to DECEDENT for their failures to comply with their duties of
9 care to provide care which a reasonably prudent hospital operator, physician, social worker, ethicist,
10 bioethics director, or other health care provider or administrator would use.

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12 42. During the period of their care of DECEDENT, each of the DEFENDANTS knew
13 or should have known that the perils posed by their failure to comply with their standards of care to
14 provide care which a reasonably prudent hospital operator, physician, social worker, ethicist, bioethics
15 director, or other health care provider or administrator would use, exposed DECEDENT to the high
16 probability of his injuries and death.

17
18 43. During the period of their care of DECEDENT, each of the DEFENDANTS
19 knowingly disregarded the aforesaid perils and high probability of injury and death to DECEDENT, and
20 in doing so failed to comply with their duties under the standards of care as set forth above. Certain of
21 their willful misconduct and failures include:

22
23 a. DEFENDANTS failed to comply with DECEDENT's DPOA by failing to
24 follow the unanimous health care decisions of DECEDENT's joint health care agents.
25 PLAINTIFF never consented to terminal extubation and thus it should have never been
26 performed. DECEDENT was improving and there was no urgency preventing
27 DEFENDANTS from communicating with PLAINTIFF to ensure that he was aware of
28 the planned terminal extubation, that he had the authority to prevent and/or postpone it,

1 and, in light of that, was still consenting to it. They did not do any of this, and instead
2 relied solely on the false and fraudulent misrepresentations of FROST, for whom
3 DEFENDANTS knew was in conflict with PLAINTIFF and for whom DEFENDANTS
4 knew had been actively attempting to disqualify PLAINTIFF as a surrogate.

5
6 b. BRADBURNE failed to disclose the DPOA to PLAINTIFF, failed to discuss
7 it with him, and failed to solicit PLAINTIFF's health care demands. He purposefully and
8 intentionally performed terminal extubation without first ensuring PLAINTIFF was aware
9 of it, that PLAINTIFF knew he had the authority to prevent and/or postpone it, and, in
10 light of that, still consented to it. BRADBURNE was aware that PLAINTIFF was not
11 consenting to terminal extubation as recent as May 5 and that on that date there was a
12 "true conflict" between joint agents. He failed to perform any due care into resolving the
13 conflict and instead proceeded with the health care wishes of FROST in blatant and
14 reckless disregard for PLAINTIFF's desires and Prob. Code §4202(b) and §4733 et seq.
15 PLAINTIFF never consented to terminal extubation and thus it should have never been
16 performed. PLAINTIFF made himself available to BRADBURNE. Any reasonable care,
17 including any direct communication with PLAINTIFF, would have uncovered FROST's
18 fraud and PLAINTIFF's lack of consent to terminal extubation, and it would have
19 prevented the subsequent injuries and death to DECEDENT.

20
21 c. TAPIA failed to disclose the DPOA to PLAINTIFF, failed to discuss it with
22 him, and failed to solicit PLAINTIFF's health care demands before conveying the health
23 care desires of DECEDENT's "family" to DEFENDANTS. DEFENDANTS relied on
24 TAPIA to provide accurate information on the desires of DECEDENT's joint health care
25 agents and relied on TAPIA to resolve conflicts between the joint agents and ascertain a
26 unanimous agreement on treatment from the joint agents. TAPIA failed to do any of this.
27 He failed to communicate to PLAINTIFF FROST's and NOVAL's desire to terminally
28 extubate DECEDENT, their disparaging allegations against PLAINTIFF, and

1 PLAINTIFF's authority to oppose terminal extubation. TAPIA had actual knowledge on
2 May 5 that PLAINTIFF demanded delay of terminal extubation, and he had actual
3 knowledge on May 6 that PLAINTIFF had retained a lawyer, but he failed to
4 communicate these to DEFENDANTS. He promised PLAINTIFF on May 5 that he
5 would "continue to follow up" with PLAINTIFF and have "continued conversations" with
6 him "regarding treatment and terminal extubation," but failed to do so. He failed to
7 provide any meaningful social work "support" to PLAINTIFF. Any reasonable care,
8 including any direct communication with PLAINTIFF about the DPOA or his rights
9 thereunder, would have uncovered FROST's fraud and prevented DECEDENT's injuries
10 and death.

11
12 d. WILSON was a "bioethics director" and/or on the "bioethics committee" and
13 participated in this matter by performing an analysis into how to handle DECEDENT's
14 health care on May 6 and May 7, knowing that a "true conflict" existed between
15 PLAINTIFF and FROST on how to proceed. In performing this task, WILSON did not
16 interview PLAINTIFF or communicate with him in any way. He interviewed only
17 FROST and NOVAL and relied entirely on their false and fraudulent version of the "true
18 conflict" with PLAINTIFF. He concluded, without having ever communicated with
19 PLAINTIFF, that PLAINTIFF was in a "clearly impaired condition" and that
20 DEFENDANTS should proceed with terminal extubation of DECEDENT at the desires of
21 "joint agent [FROST] and the remaining family members." This conclusion was never
22 communicated to PLAINTIFF, which alone is a violation of Prob. Code §§4731, et seq.
23 Then, on May 7, BRADBURNE tasked WILSON with ensuring PLAINTIFF was
24 consenting to terminal extubation. Instead of performing that duty with any reasonable or
25 due care, he approached FROST, for whom he knew was in conflict with PLAINTIFF and
26 for whom he knew was actively attempting to disqualify PLAINTIFF as a surrogate and
27 keep him from continuing DECEDENT's treatment, and asked her if PLAINTIFF was
28 consenting to terminal extubation. She said yes, and WILSON performed no further

1 efforts into the matter or diligence into the veracity of FROST's statement. He then
2 approached BRADBURNE and told him all family members had consented to terminal
3 extubation. This, according to BRADBURNE, was the sole basis for proceeding with
4 terminal extubation. Any reasonable care, including any direct communication with
5 PLAINTIFF about the DPOA or his rights thereunder, would have uncovered FROST's
6 fraud and prevented terminal extubation.

7
8 44. By virtue of the foresaid, DEFENDANTS have acted in conscious disregard of the
9 probability of DECEDENT's undesired and unauthorized injury and death, and because DECEDENT
10 was helpless to safeguard himself except through his surrogate, PLAINTIFF, DEFENDANTS' failure
11 and refusal to communicate with PLAINTIFF, seek his consult into DECEDENT's health care, and
12 obtain his authorization before purposefully and intentionally withdrawing DECEDENT's treatment to
13 purposefully and intentionally end his life, was despicable and it subjected DECEDENT to cruel and
14 unjust hardship in conscious disregard of his rights and safety. By virtue of the foresaid, DEFENDANTS
15 have each acted with recklessness, oppression, and malice, and their acts and omissions were despicable.
16 By virtue of the foresaid, punitive damages should be assessed against DEFENDANTS and each of them,
17 in a sum according to proof at trial.

18
19 **IV.**

20 **SECOND CAUSE OF ACTION**

21 *(Negligence v. all DEFENDANTS)*

22 45. PLAINTIFF re-alleges and incorporates by reference the allegations contained in
23 Paragraphs 1 through 44.

24
25 46. DECEDENT was a patient of KAISER from April 28, 2010 until his death on
26 May 7, 2010. During this period, DECEDENT was under the care of DEFENDANTS who acted as his
27 "primary care physicians."
28

1 47. By virtue of the foresaid, DEFENDANTS owed a duty of ordinary care to
2 DECEDENT, to use the degree of care and skill that a reasonable prudent person would use. In the case
3 of BRADBURNE and the other physician DEFENDANTS, to use that degree of care that a reasonably
4 prudent physician would owe given his or her knowledge, training, expertise, and skill.

5
6 48. DEFENDANTS breached the aforesaid duties of care.

7
8 49. As a direct and legal result of the foresaid, DECEDENT sustained injuries and
9 death. As a further direct and legal result of the foresaid, DECEDENT sustained lost income and other
10 damages in a sum according to proof at trial.

11
12 V.

13 **THIRD CAUSE OF ACTION**

14 *(Elder Abuse v. all DEFENDANTS)*

15 50. PLAINTIFF re-alleges and incorporates by reference the allegations contained in
16 Paragraphs 1 through 49.

17
18 51. DECEDENT was at all times herein over 65 years of age and a dependent adult
19 within the meaning of Welf. & Inst. Code §15610.23 owing to the fact that he resided in California and
20 had temporary physical or mental limitations that restricted his ability to carry out normal activities or
21 protect his rights, given the sedative medication and treatment he was treated with.

22
23 52. At all times herein, each of the DEFENDANTS had care or custody of
24 DECEDENT.

25
26 53. By virtue of the foregoing, DEFENDANTS and each of them have committed
27 neglect as defined at Welf. & Inst. Code §15610.57.

1 54. During the aforesaid periods during which DEFENDANTS and each of them had
2 care or custody of the DECEDENT, he was deprived of oxygen for extended periods of time, among
3 other things, and accordingly have engaged in "physical abuse" as defined at Welf. & Inst. Code
4 §15610.63.

5
6 55. By virtue of the foresaid, DEFENDANTS have acted in conscious disregard of the
7 probability of DECEDENT's undesired and unauthorized injury and death. DEFENDANTS' acts and
8 omissions were despicable and it subjected DECEDENT to cruel and unjust hardship in conscious
9 disregard of his rights and safety. By virtue of the foresaid, DEFENDANTS have each acted with
10 recklessness, oppression, and malice, and punitive damages should be assessed against DEFENDANTS
11 and each of them, in a sum according to proof at trial.

12
13 56. By virtue of the foresaid, DECEDENT is entitled to pre-death pain and suffering
14 damages under Welf. & Inst. Code §15657 and PLAINTIFF is entitled to attorneys' fees unilaterally to
15 him under the same provision of law.

16
17 **VI.**

18 **FOURTH CAUSE OF ACTION**

19 *(Fraudulent Concealment v. all DEFENDANTS)*

20 57. PLAINTIFF re-alleges and incorporates by reference the allegations contained in
21 Paragraphs 1 through 56.

22
23 58. DEFENDANTS and each of them had the duty to disclose the following facts to
24 DECEDENT, through his joint agent and surrogate, PLAINTIFF, by virtue of their fiduciary relationship
25 to DECEDENT as a healthcare provider/patient, and by virtue of the fact that without disclosure of the
26 following facts to PLAINTIFF, DEFENDANTS could not obtain the necessary informed consent from
27 the necessary persons for DECEDENT's treatment, and thus were not legally authorized to terminally
28 extubate DECEDENT:

- a. That KAISER had on file DECEDENT's DPOA;
- b. The specific terms of the DPOA;
- c. That PLAINTIFF was a joint-agent for DECEDENT's health care decisions and that he had the right to participate in DECEDENT's health care decisions and authority to control them, jointly, with FROST;
- d. That FROST and NOVAL were demanding terminal extubation on May 4, May 5, May 6, and May 7;
- e. That FROST and NOVAL were disparaging PLAINTIFF on May 5 and May 6 and claiming that PLAINTIFF was unfit to serve as a surrogate or health care agent for DECEDENT;
- f. That DECEDENT's condition improved "materially" on May 6 and May 7;
- g. That WILSON had determined that PLAINTIFF was unfit to serve as a surrogate for DECEDENT's health care decisions on May 6;
- h. That terminal extubation was scheduled for May 7;
- i. That PLAINTIFF had the ability to prevent or postpone extubation;
- j. That DECEDENT was extubated on May 7;
- k. That DECEDENT showed the ability to breath on lowered levels of oxygen support even after extubation on May 7; and
- l. That PLAINTIFF had the right to obtain an autopsy of DECEDENT's body post-death.

59. None of these facts were disclosed to PLAINTIFF, and they remained concealed from PLAINTIFF until approximately February 15, 2011 when PLAINTIFF discovered the DPOA and subsequently obtained the medical records, deposed individuals, and discovered the foresaid.

60. All DEFENDANTS, and each of them individually and collectively, had the duty to disclose these facts to PLAINTIFF as DECEDENT's joint agent for health care and surrogate set forth in his DPOA. Each had the opportunity to do so. All DEFENDANTS, and each of them, failed to do so.

1 61. The failure to make these said disclosures was the result of three things. First, it
2 was the result of a pre-existing relationship between TAPIA and NOVAL. TAPIA had a bias in favor of
3 NOVAL and blindly followed NOVAL's requests to end DECEDENT's life and disregard
4 DECEDENT's rights. Second, it was the result of a reckless, inexcusable, and egregiously lazy derelict of
5 duty on the part of DEFENDANTS. FROST and NOVAL spent multiple hours manipulating
6 DEFENDANTS, including TAPIA, BRADBURNE, and WILSON. According to DEFENDANTS,
7 FROST and NOVAL built a level of trust with them and they believed FROST and NOVAL without
8 reservation. One single telephone call to PLAINTIFF, or any related type of communication, disclosing
9 any of the foresaid information to PLAINTIFF would have alerted him of his rights relating to
10 DECEDENT and would have prevented DECEDENT's injuries and death. But DEFENDANTS failed to
11 do even that. Finally, third, it was the result of a business practice by DEFENDANTS established as part
12 of a larger pattern to end costly treatment of patients as soon as possible and ensure maximum profits for
13 KAISER and its employees who share in the profits. To DEFENDANTS, the sooner DECEDENT was
14 terminally extubated, the sooner they could end his costly medical treatment, move him from KAISER to
15 a mortuary, and replace him with a more profitable patient. As a result, DEFENDANTS were inclined to
16 follow the desires of FROST and NOVAL and disregard PLAINTIFF's demands and DECEDENT's
17 rights for further treatment because it was, personally, more profitable for them to do so. This profit-
18 motive cannot be understated in this matter.

19
20 62. DECEDENT relied on the assumed good faith of DEFENDANTS, and as a direct
21 and proximate result of said reliance, DECEDENT failed to receive proper care and treatment. He also,
22 by and through PLAINTIFF, failed to provide informed consent to terminal extubation. DECEDENT's
23 DPOA was never honored and the joint agents and surrogates DECEDENT sought to make his health
24 care decisions for him were never able to do so. As a direct and legal result, DECEDENT suffered
25 injuries and death.

26
27 63. By virtue of the foresaid, DEFENDANTS and each of them have acted with fraud
28 and an award of general damages for DECEDENT's pain and suffering under the provisions of Welf. &

1 Inst. Code §15657, and as assessment of punitive damages in a sum according to proof at trial, is justified
2 and appropriate. In addition, DEFENDANTS acted despicably and with recklessness, oppression, and
3 malice, and punitive damages should be assessed for that reason.

4
5 **VII.**

6 **FIFTH CAUSE OF ACTION**

7 *(Constructive Fraud v. all DEFENDANTS)*

8 64. PLAINTIFF re-alleges and incorporates by reference the allegations contained in
9 Paragraphs 1 through 62.

10
11 65. By virtue of their "healthcare provider/patient relationship" with DECEDENT,
12 DEFENDANTS and each of them owed a fiduciary duty to DECEDENT to disclose the facts set forth as
13 "a-l" in paragraph 58, above.

14
15 66. DEFENDANTS intentionally breached the aforesaid fiduciary duty to disclose the
16 following information to PLAINTIFF. Said breaches were financially motivated and intentional, and
17 directly and legally resulted in DECEDENT's terminal extubation and death.

18
19 67. By virtue of the foresaid, DEFENDANTS and each of them have acted with fraud
20 and an award of general damages for DECEDENT's pain and suffering under the provisions of Welf. &
21 Inst. Code §15657, and as assessment of punitive damages in a sum according to proof at trial, is justified
22 and appropriate. In addition, DEFENDANTS acted despicably and with recklessness, oppression, and
23 malice, and punitive damages should be assessed for that reason.

24
25 **VIII.**

26 **SIXTH CAUSE OF ACTION**

27 *(Breach of Fiduciary Duty v. all DEFENDANTS)*

1 KAISER, expressly acknowledged this request and made the fraudulent and false
2 promise that he would "continue to follow up" with PLAINTIFF and have
3 "continued conversations" with PLAINTIFF "regarding treatment and terminal
4 extubation" before any terminal extubation is performed. This was never done and
5 PLAINTIFF was never informed when terminal extubation took place two days
6 later on May 7.

7
8 76. This promise was material to PLAINTIFF and material to the appropriate and
9 intended handling of DECEDENT's health care decisions and treatment. KAISER and TAPIA never
10 performed the promised act of communicating with PLAINTIFF before any terminal extubation was to be
11 performed. This was PLAINTIFF's last communication with anyone associated with DEFENDANTS,
12 including KAISER and TAPIA, before DECEDENT's death in the evening of May 7 from terminal
13 extubation. PLAINTIFF was never made aware of the terminal extubation or given the opportunity to
14 discuss it as he was expressly promised he would be by KAISER and TAPIA.

15
16 77. KAISER and TAPIA never intended to perform their promised act when they
17 made it. They intended instead that PLAINTIFF rely on the promise, leave KAISER, and not question the
18 treatment planned over the following days or otherwise communicate with DEFENDANTS or interfere
19 with terminal extubation. PLAINTIFF relied on their promised act to his detriment and to the detriment of
20 DECEDENT. He did not appear at KAISER on May 6 or May 7 and was unaware of the terminal
21 extubation as it took place on May 7.

22
23 78. As a direct and legal result of the foregoing, DECEDENT was injured and died.

24
25 79. By virtue of the foresaid, KAISER and TAPIA acted with fraud and an award of
26 general damages for DECEDENT's pain and suffering under the provisions of Welf. & Inst. Code
27 §15657, and as assessment of punitive damages in a sum according to proof at trial, is justified and
28

1 appropriate. In addition, KAISER and TAPIA acted despicably and with recklessness, oppression, and
2 malice, and punitive damages should be assessed for that reason.

3
4 X.

5 **EIGHTH CAUSE OF ACTION**

6 *(Medical Battery v. KAISER and BRADBURNE)*

7 80. PLAINTIFF hereby re-alleges and incorporates by reference the allegations
8 contained in Paragraphs 1 through 79.

9
10 81. KAISER and BRADBURNE committed medical battery by terminally extubating
11 DECEDENT without his consent or the consent of his joint agent and surrogate for health care decisions,
12 PLAINTIFF.

13
14 82. Neither DECEDENT nor PLAINTIFF consented to terminal extubation. It was an
15 unnecessary, unauthorized, and harmful procedure, designed for the sole purpose of ending
16 DECEDENT's life, and it was done without the necessary and legally required consent of DECEDENT
17 or PLAINTIFF.

18
19 83. As a direct and legal result of the foregoing, DECEDENT suffered injuries and
20 death.

21
22 XI.

23 **NINTH CAUSE OF ACTION**

24 *(Lack of Informed Consent v. KAISER and BRADBURNE)*

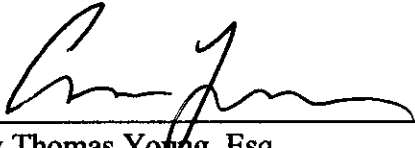
25 84. PLAINTIFF hereby re-alleges and incorporates by reference the allegations
26 contained in Paragraphs 1 through 83.

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WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

1. For general and special damages according to proof.
2. For punitive damages according to proof.
3. For the loss of the care, comfort, and society of DECEDENT.
4. For attorneys fees, unilaterally to PLAINTIFF.
5. For costs of suit, including expert costs.
6. For such other and further relief as the court deems just and proper.

DATED: February 2, 2012

By: 

Casey Thomas Young, Esq.
Attorney for Plaintiff Hector A. Noval
Personal Representative of the Estate of Victorino Noval

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street
Riverside, CA 92501
www.riverside.courts.ca.gov

NOTICE OF ASSIGNMENT TO DEPARTMENT FOR CASE MANAGEMENT PURPOSES
AND CASE MANAGEMENT CONFERENCE (CRC 3.722)

NOVAL VS KAISER FOUNDATION

CASE NO. RIC 1201608

This case is assigned to the Honorable Judge Craig G. Riemer
in Department 05 for case management purposes.
The Case Management Conference is scheduled for 08/06/12
at 8:30 in Department 05.

Case is Assigned to Department 12 for Law and Motion Purposes.

The plaintiff/cross-complainant shall serve a copy of this notice on
all defendants/cross-defendants who are named or added to the
complaint and file proof of service.

Any disqualification pursuant to CCP Section 170.6(2) shall be
filed in accordance with that section.

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of
California, County of Riverside, and that I am not a party to this
action or proceeding. In my capacity, I am familiar with the practices
and procedures used in connection with the mailing of correspondence.
Such correspondence is deposited in the outgoing mail of the Superior
Court. Outgoing mail is delivered to and mailed by the United States
Postal Service, postage prepaid, the same day in the ordinary course
of business. I certify that I served a copy of the foregoing
notice on this date, by depositing said copy as stated above.

Dated: 02/02/12

Court Executive Officer/Clerk

By: _____

JAMIE M ALVAREZ, Deputy Clerk

ac:cmc;cmcb;cmch;cmct;cmcc
cmccb;cmcch;cmcct

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, County, Number, and address):

Casey Thomas Young, Esq., SBN 24583
Law Offices of Casey Thomas Young
260 Newport Center Drive, Suite 100
Newport Beach, California 92660
TELEPHONE NO.: (949) 379-9827
ATTORNEY FOR (Name): Plaintiff

FAX NO.: (949) 999-0868

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside
STREET ADDRESS: 4050 Main Street
MAILING ADDRESS:
CITY AND ZIP CODE: Riverside, California 92501
BRANCH NAME: Historic Courthouse

CASE NAME:
Noval v. Kaiser

CASE NUMBER: **RIC** # 1201608

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

- Auto (22)
- Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
- Product liability (24)
- Medical malpractice (45)
- Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- Business tort/unfair business practice (07)
- Civil rights (08)
- Defamation (13)
- Fraud (16)
- Intellectual property (19)
- Professional negligence (25)
- Other non-PI/PD/WD tort (35)

Employment

- Wrongful termination (36)
- Other employment (15)

Contract

- Breach of contract/warranty (06)
- Rule 3.740 collections (09)
- Other collections (09)
- Insurance coverage (18)
- Other contract (37)

Real Property

- Eminent domain/inverse condemnation (14)
- Wrongful eviction (33)
- Other real property (26)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38)

Judicial Review

- Asset forfeiture (05)
- Petition re: arbitration award (11)
- Writ of mandate (02)
- Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

- Antitrust/Trade regulation (03)
- Construction defect (10)
- Mass tort (40)
- Securities litigation (28)
- Environmental/Toxic tort (30)
- Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- Enforcement of judgment (20)

Miscellaneous Civil Complaint

- RICO (27)
- Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- Partnership and corporate governance (21)
- Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 10

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 2, 2012
Casey Thomas Young, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional infliction of Emotional Distress
Negligent infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition