

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 10 2014

Juliette Jones *[Signature]*

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9 Attorneys for Plaintiff

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

BY FAX

12 BENJAMIN TOMA, a minor, by and through
13 his guardian ad litem, MARIA TOMA,

14 Plaintiff,

15 vs.

16 KAISER FOUNDATION HEALTH PLAN, INC.,
17 a Corporation, KAISER FOUNDATION
18 HOSPITALS, a Corporation, SOUTHERN
19 CALIFORNIA PERMANENTE MEDICAL GROUP,
20 a Partnership, and DOES 1 through 250,
21 inclusive,

22 Defendants.

Case No. **RIC 1409708**

COMPLAINT FOR DAMAGES FOR
MEDICAL MALPRACTICE

23 Plaintiff, through counsel, alleges for a cause of action for
24 medical malpractice as follows:

25 1. The true names, identities or capacities, whether
26 individual, associate, corporate or otherwise of Defendants DOES 1
27 through 250, inclusive, are unknown to Plaintiff who, therefore, sues
28 said Defendants by such fictitious names. When the true names,
identities or capacities of such fictitiously-designated Defendants
are ascertained, Plaintiff will ask leave of Court to amend the
Complaint to insert said true names, identities and capacities,
together with the proper charging allegations.

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1 2. Plaintiff is informed and believes and thereon alleges that
2 each of the Defendants sued herein as a DOE is responsible in some
3 manner for the events and happenings herein referred to, thereby
4 legally causing the injuries and damages to the Plaintiff as herein
5 alleged.

6 3. All of the facts, acts, events and circumstances herein
7 mentioned and described occurred in the County of RIVERSIDE, State of
8 California, and all Defendants are residents of the County of
9 RIVERSIDE, State of California, doing business in said County, State of
10 California.

11 4. At all times herein mentioned, Defendants DOES 1 through 50,
12 inclusive, were, and now are, physicians and surgeons, holding
13 themselves out as duly licensed to practice their profession under and
14 by virtue of the laws of the State of California and were, and now are,
15 engaged in the practice of their profession in the State of California.

16 5. At all times herein mentioned, Defendants DOES 51 through
17 100, inclusive, were, and now are, registered nurses, nurse
18 practitioners, nurse midwives, licensed vocational nurses, practical
19 nurses, physician assistants, aides, technicians, attendants,
20 students or other paramedical personnel, holding themselves out as
21 duly able to practice their profession under and by virtue of the laws
22 of the State of California and were, and now are, engaged in the
23 practice of their profession in the State of California and acting as
24 agents, employees and servants of some or all of the other Defendants
25 within the course and scope of said agency or employment.

26 6. At all times herein mentioned, Defendants KAISER FOUNDATION
27 HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS, SOUTHERN CALIFORNIA
28 PERMANENTE MEDICAL GROUP, and DOES 101 through 150, and each of them,

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1 were corporations, partnerships, joint ventures, or other entities
2 organized and existing under the laws of the State of California, with
3 their principal place of business situated in the State of California
4 and other States.

5 7. Defendants KAISER FOUNDATION HOSPITALS, and DOES 151
6 through 200, inclusive, were at all times herein mentioned duly
7 organized California corporations or hospitals existing under and by
8 virtue of the laws of the State of California and other States; that
9 said Defendant corporations, hospitals and the remaining Defendants,
10 and each of them, owned, operated, managed and controlled a general
11 hospital facility within the County of RIVERSIDE, State of California,
12 held out to the public at large and to the Plaintiff herein, as properly
13 equipped, fully accredited, competently staffed by qualified and
14 prudent personnel and operating in compliance with the standard of due
15 care maintained in other properly equipped, efficiently operated and
16 administered, accredited hospitals in said community, commonly known
17 as Kaiser Sunset, in RIVERSIDE, California, commonly known as Kaiser
18 Permanente Riverside.

19 8. At all times herein mentioned Defendants DOES 201 through
20 250 were doing business as a district or County hospital or clinic, and
21 DOES 240-250, a hospital operated by a government entity or medical
22 clinic or hospital, open to the public, or a medical facility or clinic,
23 operated by a government entity open to the public rendering medical,
24 surgical, hospital, diagnostic, nursing and other care to the general
25 public for compensation. All of the acts complained of herein by
26 Plaintiff against said Defendants were done and performed by said
27 Defendants by and through their duly authorized agents, servants and
28 employees, each of whom and all of whom were at all times mentioned

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1 herein acting within the course, purpose, and scope of their said
2 agency, service and employment, and whose conduct was ratified by all
3 Defendants, and each of them.

4 9. Each Defendant ratified and affirmed the conduct of each
5 other Defendant. Each of the Defendants were the agent, servant, and
6 employee of the other Defendants.

7 10. Plaintiff is informed and believes and upon such information
8 and belief alleges that at all times herein mentioned, Defendants and
9 other Defendants named fictitiously, were the agents, servants,
10 employees, joint-venturers, and copartners of their said co-
11 Defendants and, as such, were acting within the course and scope of such
12 agency, service, partnership, venture, and employment at all times
13 herein mentioned; that each and every Defendant, as aforesaid, when
14 acting as a principal, was negligent in the selection and hiring of each
15 and every other Defendant, as its agent, servant, employee, joint-
16 venturer and partner.

17 I.

18 PLAINTIFF BENJAMIN TOMA, A MINOR, BY AND THROUGH HIS GUARDIAN AD
19 LITEM MARIA TOMA ALLEGES FOR A CAUSE OF ACTION FOR NEGLIGENCE AND
20 MEDICAL MALPRACTICE AGAINST DEFENDANTS AND EACH OF THEM AS
21 FOLLOWS:

22 11. Plaintiff BENJAMIN TOMA repeats and repleads each and every
23 allegation contained each of the foregoing paragraphs, and
24 incorporates the same herein by reference.

25 12. On or about the date of the filing of the complaint, MARIA
26 TOMA was by order duly made and entered by the above entitled Court,
27 appointed Guardian ad Litem of Plaintiff BENJAMIN TOMA, a minor, born
28 April 18, 2008.

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1 13. At all times herein mentioned, and prior thereto, the
2 Plaintiff was in the exclusive control of the Defendants, and each of
3 them, and that at no time prior to the events, conduct, activities, care
4 and treatment herein complained of did the Defendants herein, or any of
5 them, obtain knowledgeable, informed consent for said care, treatment
6 or conduct; that prior to the initiation of or performance of said care,
7 treatment, procedure or conduct no opportunity was afforded the
8 Plaintiff or any authorized agent of the Plaintiff to exercise
9 voluntary, knowledgeable and informed consent to said care, treatment,
10 procedure or conduct.

11 14. On or about April 18, 2008, and prior thereto and
12 thereafter, MARIA TOMA employed Defendants, and each of them, to
13 diagnose and treat and care for plaintiff's pregnancy, birth, labor and
14 delivery and post delivery care.

15 15. On or before April 18, 2008, while the minor Plaintiff
16 BENJAMIN TOMA was under the sole and exclusive care and control of the
17 Defendants, and each of them, Defendants, and each of them
18 negligently, carelessly and unskillfully selected various hospitals
19 and physicians and other health care providers, negligently delivered,
20 examined, resuscitated, treated, cared for, diagnosed, operated upon,
21 attended and otherwise handled and controlled the minor Plaintiff
22 herein, thereby proximately causing injuries and neurological damages
23 to the minor Plaintiff.

24 16. Defendants KAISER FOUNDATION HOSPITALS, and DOES 151-200,
25 failed and neglected to adequately select a competent medical staff and
26 to periodically review the competency of its medical staff, and failed
27 to adequately monitor its staff such that the minor Plaintiff was
28 caused to, and did suffer injuries and damages as herein alleged.

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1 17. As a legal result of the negligence of the Defendants, and
2 each of them, the minor Plaintiff was injured in health, strength and
3 activity, sustaining severe shock, and injury to the body, all of which
4 said injuries have caused and continue to cause Plaintiff great
5 physical, emotional, and nervous pain and suffering, and which said
6 injuries Plaintiff is informed and believes, and thereon alleges, will
7 result in loss of earnings, permanent disability, loss of enjoyment of
8 life, and impairment of earning capacity all to Plaintiff's damage in a
9 sum in excess of the jurisdiction of the Municipal Court.

10 18. As a further legal result of the negligence of the
11 Defendants, and each of them, and the resulting injuries to the
12 Plaintiff, said Plaintiff was compelled to, and did, incur expenses for
13 medical and surgical attention, hospitalization, nursing, medication
14 and incidentals for said Plaintiff in an amount unknown to Plaintiff at
15 present.

16 19. As a further legal result of the negligence of the
17 Defendants, and each of them, and of the resulting injuries, Plaintiff
18 will be obliged to incur expenses for medical care and hospitalization
19 for an indefinite period in the future and to pay for these expenses in
20 the treatment and relief of injuries for medical and surgical
21 attention, hospitalization, nursing, medication, and incidentals for
22 said Plaintiff in an amount unknown to Plaintiff at present.

23 20. As a further legal result of the negligence of the Defendants,
24 and each of them, Plaintiff will suffer a decreased earnings and
25 earning capacity in the future and future earnings to Plaintiff's
26 further damage in a sum unknown at present.

27 WHEREFORE, Plaintiff prays for damages against the Defendants,
28 and each of them, as follows:

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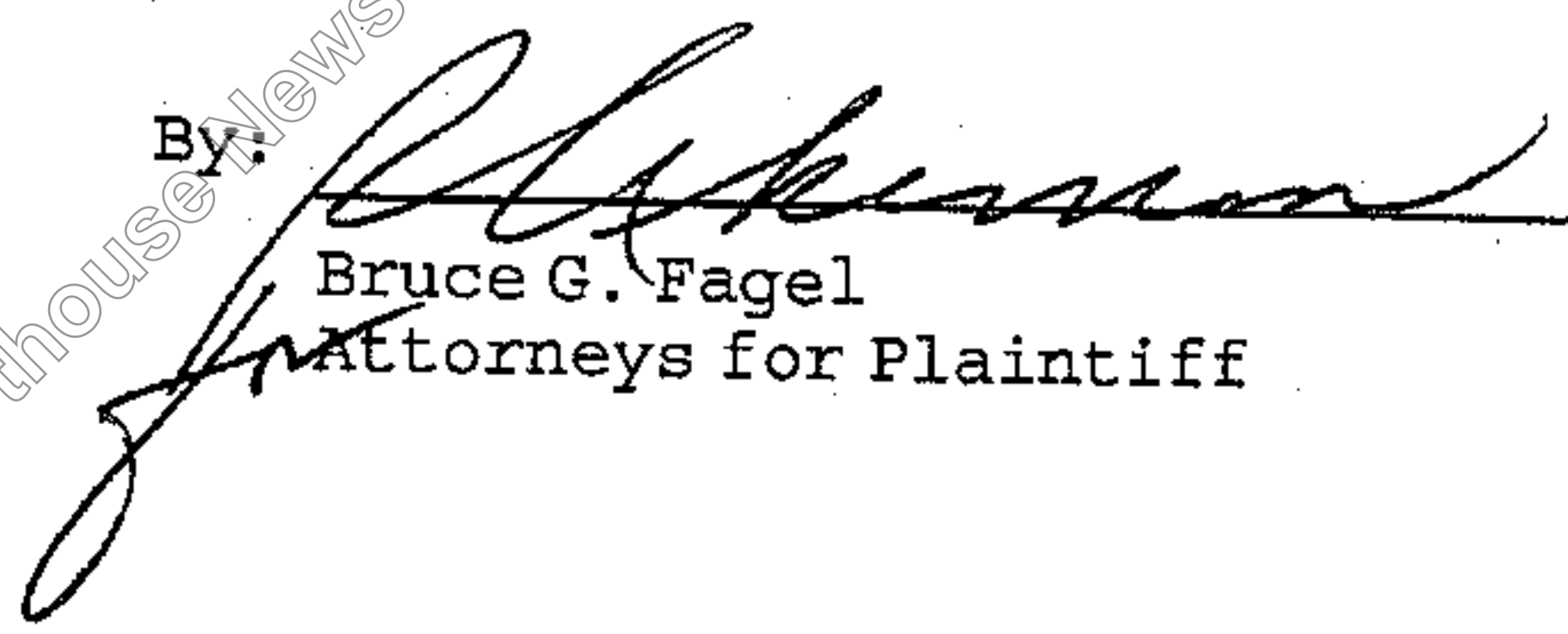
FOR THE CAUSE OF ACTION FOR NEGLIGENCE FOR PLAINTIFF BENJAMIN TOMA
A MINOR:

1. General damages, according to proof;
2. Past and future medical expenses, according to proof;
3. For loss of future earning and earning capacity,
according to proof;
4. Costs of suit incurred herein, and
5. For such other and further relief as to the Court appears
just and proper.

DATED: October 9, 2014

Law Offices of Bruce G. Fagel and
Associates

BY:



Bruce G. Fagel
Attorneys for Plaintiff

Law Offices
of
Bruce G. Fagel
&
Associates

ORIGINAL

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Bruce G. Fagel, State Bar No. 103674 Law Offices of Bruce G. Fagel and Associates 100 North Crescent Drive, Suite 360 Beverly Hills, California 90210 TELEPHONE NO.: (310) 281-8700 FAX NO.: (310) 281-5656 ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY CASE NUMBER: RIC 1409708 JUDGE: DEPT:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside STREET ADDRESS: Civil Department-Courthouse MAILING ADDRESS: 4050 Main Street CITY AND ZIP CODE: Riverside, California 92501-3703 BRANCH NAME:		
CASE NAME: TOMA v KAISER FOUNDATION HEALTH PLAN, INC.,		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

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 <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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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. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> 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):

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: October 10, 2014

Bruce G. Fagel, State Bar No. 103674
(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.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

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

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

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

TOMA vs KAISER FOUNDATION HEALTH PLAN

CASE NO. RIC1409708

This case is assigned to the Honorable Judge Sunshine S Sykes in Department 06 for all purposes.

The Case Management Conference is scheduled for 04/08/15 at 8:30 in
Department 06.

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 shall be filed in accordance with that section.

Requests for accommodations can be made by submitting Judicial Council form MC-410 no fewer than
five court days before the hearing. See California Rules of Court, rule 1.100.

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.

Court Executive Officer/Clerk

Date: 10/10/14

by: _____

JULIETTE I JONES Deputy Clerk