

#193.00
M.C.

FILED
ORANGE COUNTY SUPERIOR COURT
MAY 25 2001 *unc*
ALAN SLATER, Executive Officer/ Clerk
M. Correa
BY M. CORREA

1 R. M. "Mac" Jacobs, #48052
2 JACOBS & JACOBS
3 A Professional Law Corporation
4 22942 El Toro Road
5 Lake Forest, CA 92630
6 (714) 770-9842

5 Attorneys for Plaintiff,
STEVEN NAIR

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
8 CENTRAL JUSTICE CENTER

9 STEVEN NAIR, /
10 Plaintiff,
11 vs.
12 THOMAS S. TOOMA, M.D., /ALAN B.
13 COOPERMAN, M.D., /LASER VISION
14 CORRECTION, /NIDEK, /AND DOES
15 1 THROUGH 40, INCLUSIVE,
16 Defendants.

mm
NO. 01CC06832
COMPLAINT FOR DAMAGES
(Medical Malpractice)
(Product Liability)
JUDGE JAMES M. BROOKS
DEPT. C12

16 COMES NOW the plaintiff STEVEN NAIR who alleges as follows:

17 FIRST CAUSE OF ACTION

18 Negligence

19 (Against All Defendants)

20 1. Plaintiff is and at all times herein mentioned was a
21 resident of Orange County, California.

22 2. At all times herein mentioned defendants, THOMAS S. TOOMA,
23 M.D., ALAN B. COOPERMAN, M.D. and DOES 1 THROUGH 10, INCLUSIVE, and
24 each of them, were physicians duly licensed to practice medicine
25 in the State of California, with offices in Orange County,
26 California, and each of them has held himself out to possess that
27 degree of skill, ability and learning common to medical
28

02010031822 NAIR
01CC06832 TOOMA
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THIS CASE HAS BEEN ASSIGNED TO CIVIL CASE MANAGEMENT. EACH PLEADING MUST INCLUDE THE ASSIGNED JUDGE AND DEPARTMENT DESIGNATION AS SHOWN UNDER THE CASE NUMBER. ALL PARTIES MUST COMPLY WITH THE ORANGE COUNTY SUPERIOR COURT RULES.

1 practitioners in said community.

2 3. Plaintiff is informed and believes and upon such
3 information and belief alleges that Defendants LASER VISION
4 CORRECTION and DOES 11 THROUGH 15, INCLUSIVE are business entities
5 and professional corporations organized and existing under the laws
6 of the State of California, with offices in Orange County,
7 California, and that said Defendants employed Defendants THOMAS S.
8 TOOMA, M.D., ALAN B. COOPERMAN, M.D., AND DOES 1 THROUGH 10,
9 INCLUSIVE, to perform medical services for and at their facilities.

10 4. Defendants NIDEK and DOES 16 THROUGH 20, INCLUSIVE are
11 unknown business entities which Plaintiff, on information and
12 belief, alleges were and now are doing business within the County
13 of Orange, State of California.

14 5. The true names and capacities of the defendants named
15 herein as DOES 1 THROUGH 40, INCLUSIVE, are unknown to plaintiff,
16 who therefore sues said defendants, and each of them, by such
17 fictitious names. Plaintiff will amend this complaint to show
18 their true names and capacities when the same have been
19 ascertained. Plaintiff is informed and believes and thereon
20 alleges that each of said fictitiously named defendants is
21 negligently responsible in some manner for the events and
22 occurrences herein alleged, and that plaintiff's injuries as herein
23 alleged were proximately caused by such negligence.

24 6. Plaintiff is informed and believes and upon such
25 information and belief alleges that at all times herein mentioned
26 defendants, and each of them, were the agents and employees of
27 each of their co-defendants, and in doing the things hereinafter
28 mentioned were acting within the scope of their authority as such

1 agents and employees and with the consent of their co-defendants.

2 7. Plaintiff was required to comply with Code of Civil
3 Procedure §364, et seq., and has in fact complied with said code
4 section. Copies of said notices are attached hereto as Exhibits
5 1, 2, 3, respectively, and incorporated herein by this reference.

6 8. On or about May 25, 2000, Plaintiff underwent laser eye
7 correction surgery using the equipment designed, assembled and
8 manufactured by Defendants NIDEK and DOES 16 THROUGH 20, INCLUSIVE,
9 performed under the direction of Defendants LASER VISION
10 CORRECTION, THOMAS S. TOOMA, M.D., ALAN B. COOPERMAN, M.D. AND DOES
11 1 THROUGH 15, INCLUSIVE, which they so negligently and carelessly
12 owned, maintained, managed, operated, directed, controlled, and
13 performed, and so negligently hired, trained and supervised their
14 employees, as to cause Plaintiff to sustain the injuries
15 hereinafter alleged.

16 9. As a proximate result of the negligence of said
17 Defendants, and each of them, Plaintiff was hurt and injured in his
18 health, strength and activity, sustaining injuries to his body and
19 shock and injury to his nervous system and person, all of which
20 injuries have caused, and continue to cause, Plaintiff great
21 mental, physical and nervous pain and suffering. Plaintiff is
22 informed and believes and thereon alleges that such injuries will
23 result in some permanent disability to him. As a result of such
24 injuries, Plaintiff has suffered general damages in an amount
25 according to proof.

26 10. As a further, direct and proximate result of the
27 negligence of Defendants, and each of them, Plaintiff was required
28 to and did employ and continues to employ physicians, surgeons and

1 others for medical examination, treatment and care of said
2 injuries, and did incur medical and incidental expenses in an
3 amount according to proof; Plaintiff is informed and believes and
4 on the basis of such information and belief, alleges that he will
5 incur further medical and incidental expenses for the care and
6 treatment of said injuries, the exact amount of which is unknown
7 at this time, all to special damage in an amount according to
8 proof.

9 11. As a further, direct and proximate result of the
10 carelessness and negligence of Defendants, and each of them, the
11 earning power of Plaintiff has been greatly impaired, both in the
12 past and present in an amount according to proof.

13 SECOND CAUSE OF ACTION

14 Products Liability

15 (Against Defendants NIDEK and DOES 16 THROUGH 20, INCLUSIVE)

16 12. Plaintiff refers to paragraphs 1 through 11, inclusive,
17 of the First Cause of Action, and by reference makes them a part
18 hereof.

19 13. Defendants NIDEK and DOES 16 THROUGH 20, INCLUSIVE, are,
20 and at all times herein mentioned were, engaged in the business of
21 designing, manufacturing, and assembling laser eye equipment for
22 sale to and use by members of the medical profession, and as part
23 of its business, Defendant NIDEK and DOES 16 THROUGH 20, INCLUSIVE,
24 designed, manufactured, and assembled laser eye equipment utilized
25 by Defendants THOMAS S. TOOMA, M.D., ALAN B. COOPERMAN, M.D., LASER
26 VISION CORRECTION, and DOES 1 THROUGH 15, INCLUSIVE.

27 14. At the aforementioned time and place, Defendants NIDEK
28 and DOES 16 THROUGH 20, INCLUSIVE, and each of them, carelessly,

1 recklessly and negligently designed, assembled, owned, maintained,
2 manufactured, managed, operated, handled, controlled and sold said
3 equipment to members of the medical profession for their use in
4 performing laser eye surgery without adequate warning of the
5 particular risk of foreseeable injury to patients for which their
6 equipment was intended.

7 15. On or about May 25, 2000, as a proximate result of the
8 laser eye equipment designed, manufactured, and assembled by
9 Defendants NIDEK and DOES 16 THROUGH 20, INCLUSIVE, and supplied
10 to and utilized by Defendants THOMAS S. TOOMA, M.D., ALAN B.
11 COOPERMAN, M.D., LASER VISION CORRECTION, and DOES 1 THROUGH 15,
12 INCLUSIVE, Plaintiff sustained injuries as hereinafter alleged.

13 16. As a proximate result of the negligence of said
14 Defendants, and each of them, Plaintiff was hurt and injured in his
15 health, strength and activity, sustaining injuries to his body and
16 shock and injury to his nervous system and person, all of which
17 injuries have caused, and continue to cause, Plaintiff great
18 mental, physical and nervous pain and suffering. Plaintiff is
19 informed and believes and thereon alleges that such injuries will
20 result in some permanent disability to him. As a result of such
21 injuries, Plaintiff has suffered general damages in an amount
22 according to proof.

23 17. As a further, direct and proximate result of the
24 negligence of Defendants, and each of them, Plaintiff was required
25 to and did employ and continues to employ physicians, surgeons and
26 others for medical examination, treatment and care of said
27 injuries, and did incur medical and incidental expenses in an
28 amount according to proof; Plaintiff is informed and believes and

1 on the basis of such information and belief, alleges that he will
2 incur further medical and incidental expenses for the care and
3 treatment of said injuries, the exact amount of which is unknown
4 at this time, all to special damage in an amount according to
5 proof.

6 18. As a further, direct and proximate result of the
7 carelessness and negligence of Defendants, and each of them, the
8 earning power of Plaintiff has been greatly impaired, both in the
9 past and present in an amount according to proof.

10 THIRD CAUSE OF ACTION

11 Strict Products Liability

12 (Against Defendants NIDEK and DOES 16 THROUGH 20, INCLUSIVE)

13 19. Plaintiff refers to paragraphs 1 through 11, inclusive,
14 of the First Cause of Action, and paragraphs 13 through 18,
15 inclusive of the Second Cause of Action, and by reference makes
16 them a part hereof.

17 20. Defendants NIDEK and DOES 16 THROUGH 20, INCLUSIVE
18 intended that the NIDEK machine be used by members of the medical
19 profession to perform lasik surgery on members of the public.

20 21. At all times herein mentioned Defendants NIDEK and DOES
21 16 THROUGH 20, INCLUSIVE knew that the persons upon whom surgery
22 would be performed would not inspect the surgery machine for
23 defects.

24 22. At all times herein mentioned, when used by Defendants
25 THOMAS S. TOOMA, M.D., ALAN B. COOPERMAN, M.D., LASER VISION
26 CORRECTION and DOES 1 THROUGH 16, INCLUSIVE to perform lasik
27 surgery upon plaintiff the NIDEK machine was defective and unsafe
28 for its intended purposes.

1 deem proper.

2

SECOND CAUSE OF ACTION

3

1. For general damages in an amount according to proof;

4

2. For medical and related expenses, past and future,

5

according to proof;

6

3. For loss of earnings, past and future, according to

7

proof;

8

4. For costs of suit herein incurred; and

9

5. For such other and further relief as the court may

10

deem proper.

11

THIRD CAUSE OF ACTION

12

1. For general damages in an amount according to proof;

13

2. For medical and related expenses, past and future,

14

according to proof;

15

3. For loss of earnings, past and future, according to

16

proof;

17

4. For costs of suit herein incurred; and

18

5. For such other and further relief as the court may

19

deem proper.

20

FOURTH CAUSE OF ACTION

21

1. For general damages in an amount according to proof;

22

2. For medical and related expenses, past and future,

23

according to proof;

24

3. For loss of earnings, past and future, according to

25

proof;

26

4. For costs of suit herein incurred; and

27

5. For such other and further relief as the court may

28

deem proper.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):
R. M. "Mac" Jacobs, #48052 (949) 770-9842
Jacobs & Jacobs
22942 El Toro Road (949) 770-5739
Lake Forest, CA 92630

TELEPHONE NO.:

FAX NO.:

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

FEB 08 2002

ALAN SLATER, Clerk of the Court

BY: E. VELOZ, DEPUTY

ATTORNEY FOR (Name): STEVEN NAIR, Plaintiff

Insert name of court and name of judicial district and branch court, if any:

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

PLAINTIFF/PETITIONER: STEVEN NAIR

DEFENDANT/RESPONDENT: THOMAS S. TOOMA, M.D., et al.

REQUEST FOR DISMISSAL

- Personal Injury, Property Damage, or Wrongful Death
 Motor Vehicle Other
 Family Law
 Eminent Domain
 Other (specify): Negligence and Product Liability

CASE NUMBER:

01CC06832

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. TO THE CLERK: Please dismiss this action as follows:

a. (1) With prejudice (2) Without prejudice

b. (1) Complaint (2) Petition

(3) Cross-complaint filed by (name):

on (date):

(4) Cross-complaint filed by (name):

on (date):

(5) Entire action of all parties and all causes of action

(6) Other (specify):* Entire action as to Defendant Alan B. Cooperman, M.D. ONLY

Date: January 24, 2002

R. M. "Mac" Jacobs

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.



(SIGNATURE)

Attorney or party without attorney for: Plaintiff

Plaintiff/Petitioner

Defendant/Respondent

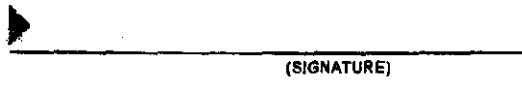
Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

** If a cross-complaint—or Response (Family Law) seeking affirmative relief—is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j)



(SIGNATURE)

Attorney or party without attorney for:

Plaintiff/Petitioner

Defendant/Respondent

Cross-complainant

(To be completed by clerk)

3. Dismissal entered as requested on (date): FEB 08 2002

4. Dismissal entered on (date): as to only (name):

5. Dismissal not entered as requested for the following reasons (specify):

6. a. Attorney or party without attorney notified on (date):

b. Attorney or party without attorney not notified. Filing party failed to provide

a copy to conform means to return conformed copy

ALAN SLATER, EXEC. OFFICER/CLERK

Date: FEB 08 2002 Clerk, by ENRIQUE VELOZ, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):
Paul W. Rosenfield, Esq., (SBN: 91765) (714) 705-5000 - T
LAW OFFICES, RICHARD J. WIANECKI, MANAGING ATTORNEY
Orange City Square
770 The City Drive South, Suite 8000
Orange, CA 92868

TELEPHONE NO.:

FOR COURT USE ONLY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MAR 27 2002

ALAN SLATER, Clerk of the Court

D. Then
BY D. THEN

ATTORNEY FOR (Name): Df: Alan D. Cooperman, O.D.

Insert name of court and name of judicial district and branch court, if any:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

PLAINTIFF/PETITIONER: STEVEN NAIR

DEFENDANT/RESPONDENT: THOMAS S. TOOMA, M.D., et al.,

REQUEST FOR DISMISSAL

- Personal Injury, Property Damage, or Wrongful Death
 Motor Vehicle Other
 Family Law
 Eminent Domain
 Other (specify):

CASE NUMBER:

01CC 06832

A conformed copy will not be returned by the clerk unless a method of return is provided with the document.

1. TO THE CLERK: Please dismiss this action as follows:

- a. (1) With prejudice (2) Without prejudice
b. (1) Complaint (2) Petition
(3) Cross-complaint filed by (name):
(4) Cross-complaint filed by (name):
(5) Entire action of all parties and all causes of action
(6) Other (specify):*

Date: December 30, 2001

R.M. "Mac" Jacobs, Esq.

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

JACOBS & JACOBS

Attorney or party without attorney for: STEVEN NAIR

- Plaintiff/Petitioner Defendant/Respondent
 Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

Attorney or party without attorney for:

- Plaintiff/Petitioner Defendant/Respondent
 Cross-complainant

(To be completed by clerk)

3. Dismissal entered as requested on (date): **MAR 27 2002**
4. Dismissal entered on (date): as to only (name):
5. Dismissal not entered as requested for the following reasons (specify):
6. a. Attorney or party without attorney notified on (date):
b. Attorney or party without attorney not notified. Filing party failed to provide
 a copy to conform means to return conformed copy

Date:

MAR 27 2002

Clerk, by _____, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Paul W. Rosenfield, Esq. SBN 91765 (714) 705-5000 LAW OFFICE, RICHARD W. WIANECKI MANAGING ATTORNEY Orange City Square 770 The City Drive South, Suite 8000 Orange, CA 92868 ATTORNEY FOR (Name): Def. Alan D. Cooperman, M.D.	TELEPHONE NO.: (714) 705-5000 FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER APR 02 2002 ALAN SLATER, Clerk of the Court <i>A Knox</i> BY A. KNOX
Insert name of court and name of judicial district and branch court, if any: SUPERIOR COURT OF THE STATE OF CALIFORNIA ORANGE COUNTY CENTRAL JUSTICE CENTER	
PLAINTIFF/PETITIONER: STEVEN NAIR DEFENDANT/RESPONDENT: THOMAS S. TOOMA, M.D., et al.	
NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Negligence and Product Liability	CASE NUMBER: 01CC06832

TO ATTORNEYS AND PARTIES WITHOUT ATTORNEYS: A dismissal was entered in this action by the clerk as shown on the Request for Dismissal. (Attach a copy completed by the clerk.)

Date: MARCH 29, 2002

PAUL W. ROSENFELD, ESQ.
 (TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

[Handwritten Signature]
 (SIGNATURE)

PROOF OF SERVICE

- I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is:
 770 The City Drive South, Suite 8000, Orange, CA 92868
- I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by mailing them, in a sealed envelope with postage fully prepaid, as follows:
 - I deposited the envelope with the United States Postal Service.
 - I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
 - Date of deposit:
 - Place of deposit (city and state): Orange, CA 92868
 - Addressed as follows (name and address):
 SEE ATTACHED MAILING LIST
- I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by personally delivering copies to the person served as shown below:

Name: _____ Date: _____ Time: _____ Address: _____

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

Date: March 29, 2002

ROBERTA J. ANDERSON
 (TYPE OR PRINT NAME)

[Handwritten Signature]
 (SIGNATURE OF DECLARANT)