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M.C.

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

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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  
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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.

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SECOND CAUSE OF ACTION

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

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

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according to proof;

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

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proof;

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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

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

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deem proper.

20

FOURTH CAUSE OF ACTION

21

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

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

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according to proof;

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

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proof;

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4. For costs of suit herein incurred; and

27

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

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deem proper.