

1 BRYAN M. GARRIE (SBN 131738)
BRYAN M. GARRIE, APC
2 Post Office Box 2731
La Jolla, California 92038
3 Telephone: (858) 459-0020
Facsimile: (858) 459-0777

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 27 2022

4 MATTHEW P. TYSON (SBN 178427)
5 LAW OFFICE OF MATTHEW P. TYSON
5580 La Jolla Blvd. #170
6 La Jolla, California 92037
Telephone: (619) 787-0614

BY Chris Goldstein
CHRIS GOLDSTEIN, DEPUTY

7 Attorneys for Plaintiff Evangeline Ortega

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT**

10 EVANGELINE ORTEGA,

Case No. CIV SB 2213442

11 Plaintiff,

Unlimited Jurisdiction

12 v.

Jury Trial Demanded

13 REDLANDS COMMUNITY HOSPITAL;
14 BENJAMIN CHOU, MD; JISANG KIM,
15 MD; JULIE SMITHWICK, DO; and DOE 1
through DOE 25, inclusive,

**COMPLAINT FOR SURVIVAL ACTION
AND WRONGFUL DEATH SOUNDING
IN:**

16 Defendants.

- 17 1. CONSTRUCTIVE FRAUD; AND
- 18 2. VIOLATION OF THE ELDER
ABUSE AND DEPENDENT ADULT
CIVIL PROTECTION ACT

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1 **Plaintiff Evangeline Ortega (Evangeline) alleges:**

2 **Introduction**

3 1. Evangeline's husband of 46 years, Armando Ortega (Armando), was a healthy 65-
4 year-old man who faced a very low risk (a less than 1% chance) of dying from COVID-19.



16 2. Armando's risk of death dramatically changed for the worse (by 3,000%) when
17 physicians and staff of Redlands Community Hospital (RCH) failed to disclose, to Armando or
18 Evangeline, the risks associated with the medically unnecessary and extremely dangerous drug
19 Remdesivir, or their financial incentive to administer the drug, before administering it to
20 Armando.

21 3. RCH physicians and other staff administered the Remdesivir to Armando without
22 the knowledge or informed consent of Armando or Evangeline.

23 4. The Remdesivir caused Armando to suffer kidney failure, severe and enduring
24 pain and suffering including multiple organ failure, and death, and it caused Evangeline to suffer
25 the loss of her husband.

Parties, Jurisdiction, and Venue

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2 5. Evangeline is an individual residing in San Bernardino County and the wife of, and
3 successor in interest to, her deceased husband, Armando.

4 6. Evangeline has executed and filed with this complaint a sworn declaration of
5 successor-in-interest.

6 7. Evangeline, as successor-in-interest, seeks survivor action general damages
7 pursuant to Code of Civil Procedure Section 377.30, *et seq.*, including 377.34, subdivision (b).

8 8. Evangeline also seeks wrongful death general and special damages pursuant to
9 Code of Civil Procedure Section 377.60, *et seq.*

10 9. RCH is a 501(c)(3) non-profit organization with its principal place of business in
11 San Bernardino County.

12 10. Benjamin Chou, MD, Jisang Kim, MD, and Julie Smithwick, DO are licensed
13 physicians of unknown domicile who had privileges to provide medical care to RCH patients in
14 San Bernardino County.

15 11. Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 15, were apparent
16 and/or ostensible agents of RCH.

17 12. The true name and capacity and/or bases of liability of DOE 1 through DOE 25,
18 inclusive, is unknown, and Plaintiffs will seek leave to amend this complaint to identify their true
19 names and capacities when known.

20 13. On information and belief, each of the fictitiously named DOE defendants is
21 responsible for, or has contributed to, the loss and damages alleged herein and the matters giving
22 rise to the relief sought.

23 14. The conduct giving rise to the causes of action alleged herein occurred within San
24 Bernardino County and within the City of Redlands.

25 15. Evangeline seeks a damages award of more than the \$25,000 jurisdictional limit.

1 16. This action is not subject to removal to federal court under the PREP Act because
2 (1) defendants were not acting under a federal official and performing a duty of the government,
3 (2) Congress did not intend the PREP Act to completely preempt all state-law claims related to
4 the pandemic, and (3) there is no embedded federal question in these claims. (*Saldana v.*
5 *Glenhaven Healthcare LLC*, 27 F.4th 679 (9th Cir. 2022).) Removal in disregard of the holding
6 in *Saldana* may be sanctionable.

7 Remdesivir

8 17. Remdesivir is a failed Ebola drug that was found to be terminally toxic to the
9 kidneys. It was pulled from an Ebola study because more than fifty-three-percent (53%) of the
10 Remdesivir recipients died.

11 18. In COVID-19 healthcare circles across the country, Remdesivir has carried the
12 nickname “Run, death is near.”

13 19. According to Peter McCullough, MD, MPH, FAACC, FAHA, FNKF, FNIA,
14 FCRSA, “Remdesivir has two problems: First, it doesn’t work. Second, it is toxic and kills
15 people.”

16 20. Remdesivir is medically unnecessary for treatment of COVID-19.

17 21. An extensive study sponsored by the World Health Organization, conducted in
18 405 hospitals across 30 countries on more than 10,000 patients, found that Remdesivir does not
19 help patients with COVID-19 survive, and that it does not shorten the recovery time for those
20 COVID-19 patients who do survive.

21 22. On November 19, 2020 the World Health Organization’s Guideline Development
22 Group, a panel of international experts who provide advice to the agency, published their
23 conclusion that there is no evidence that Remdesivir has meaningful effect on mortality or on
24 other important outcomes for COVID-19 patients, such as the need for mechanical ventilation or
25 time for clinical improvement.

1 23. On November 20, 2020 the World Health Organization published its conditional
2 recommendation that physicians do **not** treat COVID-19 patients with Remdesivir. The
3 conditional recommendation meant that there was not enough evidence to support its use.

4 24. Remdesivir presents risk of serious injury and death.

5 25. Remdesivir presents a roughly three-thousand-percent (3,000%) increase in the
6 rate of acute renal failure as compared to other drugs prescribed in comparable situations.

7 26. Roughly one (1) out of every five (5) hospitalized COVID-19 patients who
8 receives Remdesivir suffers acute renal failure.

9 27. RCH would receive a financial bonus when Remdesivir was administered to a
10 COVID-19 patient with Medicare. The financial bonus to RCH was of personal economic
11 interest to physicians working at RCH's facility and affected their professional judgment.

Fiduciary Duty and Constructive Fraud

12 28. A fiduciary must tell its principal of all information it possesses that is material to
13 the principal's interests. A fiduciary's failure to share material information with the principal is
14 constructive fraud.
15

16 29. A person of adult years and in sound mind has the right, in the exercise of control
17 over his or her own body, to determine whether or not to submit to lawful medical treatment.

18 30. A physician is under a fiduciary duty to disclose all information material to a
19 patient's decision to receive or decline a particular medical treatment.

20 31. A physician is under a fiduciary duty to disclose medical errors to a patient.

21 32. A physician must disclose personal interests unrelated to a patient's health,
22 whether research or economic, that may affect the physician's professional judgment.

23 33. It is medically unethical to administer an unnecessary medical treatment.

24 34. It is medically unethical, and a violation of California, federal, and International
25 laws, to administer a medical treatment without informed consent.

1 35. Constructive fraud occurs when a physician breaches his or her fiduciary duty to
2 disclose material information to their patient. No fraudulent intent is required, and reasonable
3 reliance on the nondisclosure is presumed.

4 **Armando and Evangeline**

5 36. At age 20, Armando married his 18-year-old childhood sweetheart, Evangeline.

6 37. Armando and Evangeline served together as Pastors.

7 38. Armando was a Founder of Amistad Cristiana / Christian Fellowship and served
8 as its Senior Pastor for roughly 30 years.

9 39. Armando also founded works in Ecuador, Mexicali, San Luis Colorado,
10 Beaumont, Gomez Palacios, Nicaragua, and Tijuana.

11 40. Armando had a large following of supporters in the local community and across
12 nations.

13 41. Armando was known for his love of his wife, Evangeline, and for his faith,
14 kindness, generosity, and contagious joy and laughter.

15 42. Armando had 4 children and 7 grandchildren.

16 43. Armando was active and athletic.

17 44. Armando was admitted to RCH after receiving a positive COVID-19 test result
18 and feeling ill.

19 **Nondisclosure**

20 45. Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 15 each served as a
21 physician to Armando.

22 46. Drs. Chou, Kim, and Smithwick, RCH, and DOE 1 through DOE 25 recognized
23 Evangeline as the wife, contact person, and durable power of attorney for Armando.

24 47. Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 15 held a fiduciary
25 duty to Armando and Evangeline to (1) disclose material information regarding the benefits and

1 risks of Remdesivir, and the potential financial bonus for RCH when Remdesivir was
2 administered, and (2) obtain informed consent, before administering the drug.

3 48. Armando, Evangeline, and a reasonable person in the position of Armando and/or
4 Evangeline, would consider the following information, which was not disclosed to Armando or
5 Evangeline, to be material in considering whether to consent to the administration of Remdesivir:

6 a. The largest study of Remdesivir found that it does not help patients with
7 COVID-19 survive, and that it does not shorten the recovery time for those COVID-19 patients
8 who do survive;

9 b. Remdesivir may increase the risk of death, and it presents a significant
10 and/or a twenty-percent (20%) chance of acute renal failure;

11 c. RCH would receive a financial bonus if Remdesivir was administered to a
12 Medicare patient; and/or

13 d. The World Health Organization published a conditional recommendation
14 that physicians do **not** treat COVID-19 patients with Remdesivir, and that the conditional
15 recommendation meant that there was not enough evidence to support its use.

16 49. Defendants administered Remdesivir without the knowledge or informed consent
17 of Armando or Evangeline.

18 50. Defendants never disclosed to Armando or Evangeline that Remdesivir was
19 administered to Armando. The use of Remdesivir was not discovered until after Armando
20 passed away and medical records were finally released to Evangeline.

21 **Further Neglect**

22 51. Armando was left prone at RCH until he developed bedsores and a black burn on
23 his nose.

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1 **FIRST CAUSE OF ACTION**
2 **Survival Action and Wrongful Death Sounding in Constructive Fraud**

3 **By Plaintiff Evangeline Ortega**
4 **Against Defendants Jisang Kim, MD,**
5 **Redlands Community Hospital, and DOE 1 through DOE 25, inclusive**

6 52. Paragraphs 1 through 50 are re-alleged.

7 53. Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 15 held a fiduciary
8 duty to Armando.

9 54. Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 15 knew, or should
10 have known, that Armando, Evangeline, and a reasonable person in the position of Armando
11 and/or Evangeline, would consider the following information, which was not disclosed to
12 Armando or Evangeline, to be material in considering whether to consent to the administration of
13 Remdesivir:

14 a. The largest study of Remdesivir found that it does not help patients with
15 COVID-19 survive, and that it does not shorten the recovery time for those COVID-19 patients
16 who do survive;

17 b. Remdesivir may increase the risk of death, and it presents a significant
18 and/or a twenty-percent (20%) chance of acute renal failure;

19 c. RCH would receive a financial bonus if Remdesivir was administered to a
20 Medicare patient; and/or

21 55. The World Health Organization published a conditional recommendation that
22 physicians do **not** treat COVID-19 patients with Remdesivir, and that the conditional
23 recommendation meant that there was not enough evidence to support its use.

24 56. Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 15 caused Remdesivir
25 to be administered to Armando without the knowledge or informed consent of Armando or
Evangeline.

1 57. Armando was harmed. He suffered pre-death physical injuries, acute kidney
2 failure, severe pain and suffering, and ultimately death.

3 58. The conduct of Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 15 was
4 a substantial factor in causing Armando's harm, and ultimately death.

5 59. Evangeline was harmed. She suffered loss of love, affection, intimacy, society,
6 service, relationship, comfort, care, support, right of support, expectations of future support and
7 counseling, companionship, solace and mental support, training, guidance, as well as other
8 benefits and assistance, from Armando, as well as funeral and related expenses.

9 60. The conduct of Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 15 was
10 a substantial factor in causing Evangeline's harm.

11 61. The conduct of Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 15 was
12 authorized, approved, or ratified by officers, directors, and/or managing agents of RCH and/or
13 DOE 16 through 25.

14 62. The conduct of Defendants was reckless, fraudulent, and/or oppressive, and it
15 warrants the imposition of punitive and exemplary damages.

16 **SECOND CAUSE OF ACTION**
17 **Survival Action and Wrongful Death Sounding in Violation of the**
18 **Elder Abuse and Dependent Adult Civil Protection Act**

19 **By Plaintiff Evangeline Ortega**
20 **Against Defendants Jisang Kim, MD,**
21 **Redlands Community Hospital, and DOE 1 through DOE 25, inclusive**

22 63. Paragraphs 1 through 51 and 53 through 55 are re-alleged.

23 64. Armando was an elder under Welfare and Institutions Code Section 15610.27.

24 65. Defendants had care or custody of Armando.

25 66. The conduct of Defendants in leaving left Armando in a prone position until he
suffered bedsores and his nose was burned black constituted neglect under Welfare and
Institutions Code Section 15610.57.

1 67. The conduct of Defendants in leaving left Armando in a prone position until he
2 suffered bedsores and his nose was burned black was reckless.

3 68. The conduct of Defendants, in administering Remdesivir to Armando without the
4 knowledge or informed consent of Armando or Evangeline, constituted a battery under Penal
5 Code Section 240 and physical abuse under Welfare and Institutions Code Section 15610.63.

6 69. The conduct of Defendants, in administering the medically unnecessary and
7 extremely dangerous drug Remdesivir to Armando without the knowledge or informed consent
8 of Armando or Evangeline, constituted a failure to protect from health and safety hazards, and
9 neglect, under Welfare and Institutions Code Section 15610.57.

10 70. The conduct of Defendants, in administering Remdesivir to Armando without the
11 knowledge or informed consent of Armando or Evangeline, was reckless, fraudulent, and/or
12 oppressive.

13 71. Armando was harmed. He suffered pre-death physical injuries, acute kidney
14 failure, bedsores and facial burn, severe pain and suffering, and ultimately death.

15 72. The conduct of Defendants was a substantial factor in causing Armando's harm,
16 and ultimately death.

17 73. Evangeline was harmed. She suffered loss of love, affection, intimacy, society,
18 service, relationship, comfort, care, support, right of support, expectations of future support and
19 counseling, companionship, solace and mental support, training, guidance, as well as other
20 benefits and assistance, from Armando, as well as funeral and related expenses.

21 74. The conduct of Defendants was a substantial factor in causing Evangeline's harm.

22 75. The conduct of Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 15 was
23 authorized, approved, or ratified by officers, directors, and/or managing agents of RCH and/or
24 DOE 16 through 25.

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1 76. The conduct of Defendants warrants the imposition of punitive and exemplary
2 damages.


3 **PRAYER FOR RELIEF**

4 Evangeline Ortega prays for entry of judgment in her favor and against Redlands
5 Community Hospital, Benjamin Chou, MD, Jisang Kim, MD, Julie Smithwick, DO, and DOE 1
6 through DOE 25, for survivor pre-death pain and suffering general damages, wrongful death
7 general and special damages, statutory damages, punitive and exemplary damages, attorney's
8 fees as provided by law and/or statute, costs of suit, including expert witness fees, and for such
9 other and further relief as the court deems just.

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11 Respectfully,

12
13 BRYAN M. GARRIE, APC
14 LAW OFFICE OF MATTHEW P. TYSON

15 Dated: June 25, 2022

16 By: 
17 BRYAN M. GARRIE
18 MATTHEW P. TYSON
19 Attorneys for Plaintiff Evangeline Ortega
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