

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

7 MATTHEW P. TYSON (SBN 178427)
8 LAW OFFICE OF MATTHEW P. TYSON
9 5580 La Jolla Blvd. #170
10 La Jolla, California 92037
11 Telephone: (619) 787-0614

12 Attorneys for Plaintiff Evangeline Ortega

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JAN 10 2023

BY: 
Samantha Becerra, Deputy

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT**

15 EVANGELINE ORTEGA ,

16 Plaintiff,

17 v.

18 REDLANDS COMMUNITY HOSPITAL;
19 BENJAMIN CHOU, MD; JISANG KIM,
20 MD; JULIE SMITHWICK, DO; and DOE 1
21 through DOE 25, inclusive,

22 Defendants.

Case No. CIVSB2213442

Department S28
Honorable Michael Sachs

**FIRST AMENDED COMPLAINT FOR
WRONGFUL DEATH AND SURVIVAL
ACTIONS SOUNDING IN:**

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

Action filed: June 27, 2022

Trial date: Not set



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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT**

11 EVANGELINE ORTEGA ,

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14 REDLANDS COMMUNITY HOSPITAL;
BENJAMIN CHOU, MD; JISANG KIM,
15 MD; JULIE SMITHWICK, DO; and DOE 1
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1 Plaintiff Evangeline Ortega alleges:

2 **FIRST CAUSE OF ACTION**

3 **By:**
4 **EVANGELINE ORTEGA**

5 **Against:**
6 **REDLANDS COMMUNITY HOSPITAL; BENJAMIN CHOU, MD; JISANG KIM, MD;**
7 **JULIE SMITHWICK, DO; and DOE 1 through DOE 25, inclusive**

8 **For:**
9 **WRONGFUL DEATH AND SURVIVAL ACTIONS**
10 **SOUNDING IN CONSTRUCTIVE FRAUD**

11 **1. Parties, Jurisdiction, and Venue**

12 1. Plaintiff Evangeline Ortega (Evangeline) is an individual residing in San
13 Bernardino County and the wife of, and successor in interest to, her deceased husband, Armando
14 Ortega (Armando).

15 2. Evangeline has executed and filed a sworn declaration of successor-in-interest.
16 Evangeline, as successor-in-interest, seeks survivor action general damages pursuant to Code of
17 Civil Procedure Section 377.30, *et seq.*, including 377.34, subdivision (b), and wrongful death
18 general and special damages pursuant to Code of Civil Procedure Section 377.60, *et seq.*

19 3. Defendant Redlands Community Hospital (RCH) is a 501(c)(3) non-profit
20 organization with its principal place of business in San Bernardino County.

21 4. Defendants Benjamin Chou, MD, Jisang Kim, MD, and Julie Smithwick, DO are
22 licensed physicians of unknown domicile who had privileges to provide medical care to RCH
23 patients in San Bernardino County.

24 5. Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 25, were each actual,
25 apparent and/or ostensible agents of RCH.

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1 6. The true name and capacity and/or bases of liability of DOE 1 through DOE 25,
2 inclusive, is unknown, and Evangeline will seek leave to amend this complaint to identify their
3 true names and capacities when known.

4 7. On information and belief, each of the fictitiously named DOE defendants is
5 responsible for, or has contributed to, the loss and damages alleged herein and the matters giving
6 rise to the relief sought.

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

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

10 **2. Introduction**

11 10. This count concerns a hospitalized patient being administered drugs
12 surreptitiously. These drugs presented no medical benefit or were contraindicated, but presented
13 very high risk of severe injury and death, and also presented a substantial financial benefit to the
14 administering physicians' principal, the hospital.

15 11. Personal autonomy and the patient's right to disclosure of risks and alternative
16 treatments were disregarded, the patient suffered and died, and the healthcare provider profited.

17 **3. Personal Autonomy and Consent to Medical Treatment**

18 12. In *Thor v. Superior Court* (1993) 5 Cal.4th 725, the California Supreme Court
19 states:

20 “More than a century ago, the United States Supreme Court declared, ‘No
21 right is held more sacred, or is more carefully guarded, by the common law, than
22 the right of every individual to possession and control of his own person, free from
23 all restraint or interference of others, unless by clear and unquestionable authority
24 of law... ‘The right to one’s person may be said to be a right of complete immunity:
25 to be let alone.’” [Citation.]’ (Union Pacific Railway Co. v. Botsford (1891) 141
U.S. 250, 251 [Citation.]) Speaking for the New York Court of Appeals, Justice
Benjamin Cardozo echoed this precept of personal autonomy in observing, ‘Every
human being of adult years and sound mind has a right to determine what shall be
done with his own body...’ (Schloendorff v. Society of New York Hospital (1914)
211 N.Y. 125 [Citation.], overruled on other grounds in [Citation].) And over two

1 decades ago, Justice Mosk reiterated the same principle for this court: ‘[A] person
2 of adult years and in sound mind has the right, in the exercise of control over his
3 body, to determine whether or not to submit to lawful medical treatment.’ (Cobbs
4 v. Grant (1972) 8 Cal.3d 229, 242 [Citation.].) *Id.* at 731.

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

7 14. Armando, or else his wife, Evangeline, had the right to determine whether or not
8 to submit to lawful medical treatment for Armando.

9 **4. Constructive Fraud by Nondisclosure**

10 15. A fiduciary must tell its principal of all information it possesses that is material to
11 the principal’s interests. A fiduciary’s failure to share material information with the principal is
12 constructive fraud.

13 16. A physician is under a fiduciary duty to disclose to the patient, or the patient’s
14 representative if the patient is incapacitated, all information material to a patient’s decision to
15 receive or decline a particular medical treatment.

16 17. A physician is under a fiduciary duty to disclose medical errors to a patient.

17 18. A physician must disclose personal interests unrelated to a patient’s health,
18 whether research or economic, that may affect the physician’s professional judgment.

19 19. It is medically unethical to administer an unnecessary medical treatment.

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

22 21. Constructive fraud occurs when a physician breaches his or her fiduciary duty to
23 disclose material information to their patient, or discloses false information. No fraudulent intent
24 is required, and reasonable reliance on the nondisclosure is presumed.

25 22. Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 25, each held a
fiduciary to Armando and/or Evangeline as a physician for Armando.

1 **5. Remdesivir and Dexamethasone**

2 23. Armando presented to the RCH emergency department on December 22, 2020
3 with shortness of breath and was positive for COVID-19. He was sent home without receiving
4 treatment or referral to a specialist within the standard of care.

5 24. Armando returned to the RCH emergency department on December 24, 2020 with
6 worsening shortness of breath.

7 25. Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 25 looked to
8 Evangeline as an authorized medical decision-maker for Armando.

9 26. Remdesivir was administered to Armando daily, and for a total of 5 days,
10 beginning on December 26, 2020.

11 27. Dexamethasone was administered to Armando daily, and for a total of 10 days,
12 beginning on December 24, 2020.

13 28. Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 25, either wrote the
14 order for Remdesivir, wrote the order for Dexamethasone, or was the responsible physician for
15 Armando when the Remdesivir and/or the Dexamethasone was administered.

16 29. The administration of Remdesivir and Dexamethasone to Armando by nurses or
17 other RCH staff was done within the scope and course of their work under the order and
18 supervision of Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 25.

19 30. Armando, Evangeline, and a reasonable patient in the position of Armando, would
20 have wanted to know, and Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 25 knew
21 or should have known that they would have wanted to know, the following material information
22 regarding Remdesivir and Dexamethasone – which was never disclosed to them – before
23 determining whether or not to submit to treatment with Remdesivir or Dexamethasone:

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

4 b. In COVID-19 healthcare circles across the country, Remdesivir has
5 carried the nickname “Run, death is near”;

6 c. According to Peter McCullough, MD: “Remdesivir has two problems:
7 First, it doesn’t work. Second, it is toxic and kills people”;

8 d. Remdesivir is medically unnecessary for treatment of COVID-19. An
9 extensive study sponsored by the World Health Organization, conducted in 405 hospitals across
10 30 countries on more than 10,000 patients, found that Remdesivir does not help patients with
11 COVID-19 survive, and that it does not shorten the recovery time for those COVID-19 patients
12 who do survive;

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

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

22 g. Remdesivir presents risk of serious injury and death. Remdesivir presents
23 a roughly three-thousand-percent (3,000%) increase in the rate of acute renal failure as
24 compared to other drugs prescribed in comparable situations, and roughly one (1) out of every
25 five (5) hospitalized COVID-19 patients who receives Remdesivir suffers acute renal failure;

1 h. On information and belief, RCH, Drs. Chou, Kim, and Smithwick, and
2 DOE 1 through DOE 25, had a financial interest in the form of bonus or incentive to RCH if
3 Remdesivir was administered to Armando;

4 i. Dexamethasone was a Black Box Warning drug due to its extreme risk,
5 including worsening hyperglycemia, risk of infections, changed in blood pressure, damage to
6 bones, psychiatric problems, and adrenal dysfunction.

7 **6. Alternative Treatment for COVID-19**

8 31. Safe multi-drug treatment for COVID-19 patients using well-studied and low risk
9 off-label medications (SMD) has been the standard of care for physicians in Southern California
10 – and nationwide – since the beginning of the COVID-19 pandemic.

11 32. Armando, Evangeline, and a reasonable patient in the position of Armando, would
12 have wanted to know, and Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 25 knew
13 or should have known that they would have wanted to know, the following material information
14 regarding SMD – which was never disclosed to them – before determining whether or not to
15 submit to treatment with Remdesivir or Dexamethasone:

16 a. SMD has proven to be highly effective. For instance, local Southern
17 California physicians George Fareed, MD and Brian Tyson, MD had treated thousands of
18 COVID-19 patients and had zero (0) patient deaths when SMD began within 7 days of symptom
19 onset. To a reasonable degree of medical certainty, Armando would not die if he received SMD;

20 b. SMD presented very low risk to Armando . It used well-studied off-label
21 medications with a well-established safety profile;

22 c. SMD could be administered on an outpatient basis; and/or

23 d. SMD was very inexpensive.

24 33. Armando was a prime candidate for SMD treatment because his symptoms were
25 less than 7 days old.

1 **7. Nondisclosure Caused Pain, Suffering, and Death**

2 34. Before Armando was given Remdesivir and Dexamethasone, he faced an
3 extremely low risk (a less than 1% chance) of death from COVID-19.

4 35. Had Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 25, provided
5 Armando or Evangline with disclosure of (a) the risks of Remdesivir and Dexamethasone, (b) the
6 financial incentive to the physicians' principal, RCH, for the administration of Remdesivir,
7 and/or (c) the availability and risk of alternative treatment, including SMD, both Armando and
8 Evangeline, and a reasonable patient in the position of Armando, would have refused treatment
9 with Remdesivir and Dexamethasone and instead chosen treatment with SMD.

10 36. The nondisclosures did not concern minor or remote risks or conflict. To the
11 contrary, the nondisclosures concerned severe and extreme risks and a substantial conflict of
12 interest.

13 37. Armando and Evangeline suffered harm.

14 38. The inaction of Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 25, in
15 failing to provide fiduciary disclosures to Armando or Evangline , was a substantial factor in
16 causing Armando to experience extreme and enduring pre-death pain and suffering, including
17 organ failure, and in causing Evangeline to suffer lost love, companionship, care, assistance,
18 protection, affection, guidance, society, moral support, and enjoyment of intimacy, when
19 Armando died at RCH, along with substantial economic loss.

20 39. Had Armando received SMD instead of the treatment provided by Drs. Chou,
21 Kim, and Smithwick, and DOE 1 through DOE 25, at RCH, he would not have experienced pre-
22 death pain and suffering at RCH, and he would not have died.

23 40. RCH is directly and/or vicariously liable for the conduct of Drs. Chou, Kim, and
24 Smithwick, and DOE 1 through DOE 25.

25 41. An officer, director, and/or managing agent of RCH authorized, approved,

1 and/ratified the conduct of Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 25.

2 **8. Prayer for Relief**

3 42. Plaintiff Evangeline Ortega prays for entry of judgment in her favor and against
4 Defendants Redlands Community Hospital, Benjamin Chou, MD, Jisang Kim, MD, and Julie
5 Smithwick, DO, and DOE 1 through DOE 25, inclusive, for survivor pre-death pain and
6 suffering general damages, wrongful death general and special damages, costs of suit, and for
7 such other and further relief as the court deems just.

8 43. Plaintiff Evangeline Ortega reserves the right to move this court, with supporting
9 evidence, for leave to amend this complaint and seek an award of punitive and exemplary
10 damages against Defendants Redlands Community Hospital, Benjamin Chou, MD, Jisang Kim,
11 MD, and Julie Smithwick, DO, and DOE 1 through DOE 25, inclusive.

12 **SECOND CAUSE OF ACTION**

13 **By:**
14 **EVANGELINE ORTEGA**

15 **Against:**
16 **REDLANDS COMMUNITY HOSPITAL; and DOE 1 through DOE 25, inclusive**

17 **For:**
18 **SURVIVAL ACTION SOUNDING IN VIOLATION OF THE**
19 **ELDER ABUSE AND DEPENDENT ADULT CIVIL PROTECTION ACT**

20 **1. Parties, Jurisdiction, and Venue**

21 1. Plaintiff Evangeline Ortega (Evangeline) is an individual residing in San
22 Bernardino County and the wife of, and successor in interest to, her deceased husband, Armando
23 Ortega (Armando).

24 2. Evangeline has executed and filed a sworn declaration of successor-in-interest.
25 Evangeline, as successor-in-interest, seeks survivor action general damages pursuant to Code of
Civil Procedure Section 377.30, *et seq.*, including 377.34, subdivision (b), and wrongful death
general and special damages pursuant to Code of Civil Procedure Section 377.60, *et seq.*

1 3. Defendant Redlands Community Hospital (RCH) is a 501(c)(3) non-profit
2 organization with its principal place of business in San Bernardino County.

3 4. Defendants Benjamin Chou, MD, Jisang Kim, MD, and Julie Smithwick, DO are
4 licensed physicians of unknown domicile who had privileges to provide medical care to RCH
5 patients in San Bernardino County.

6 5. Drs. Chou, Kim, and Smithwick, and DOE 1 through DOE 25, were each actual,
7 apparent and/or ostensible agents of RCH.

8 6. The true name and capacity and/or bases of liability of DOE 1 through DOE 25,
9 inclusive, is unknown, and Evangeline will seek leave to amend this complaint to identify their
10 true names and capacities when known.

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

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

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

17 **2. Elder Abuse**

18 10. This count concerns an elderly hospitalized patient being neglected and left in a
19 prone position under he suffered bedsores, and his nose was burned black.

20 11. Armando was an elder under Welfare and Institutions Code Section 15610.27.

21 12. Each Defendant had care or custody of Armando during his hospitalization
22 between December 24, 2020 and January 6, 2021.

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

