

Superior Court of California

County of Orange



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and EVAN MALTESE, a minor, by and through his Guardian ad Litem,
MICHAEL ALAN MALTESE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

MICHAEL ALAN MALTESE; ROWENA
JAVIER MALTESE; and EVAN MALTESE,
a minor, by and through his Guardian ad
Litem, MICHAEL ALAN MALTESE,

Plaintiffs,

vs.

KAISER FOUNDATION HEALTH PLAN,
INC.; KAISER FOUNDATION HOSPITALS;
and SOUTHERN CALIFORNIA
PERMANENTE MEDICAL GROUP; and
DOES 1 through 100, Inclusive,

Defendants.

CASE NO: 30-2014-00722451-CU-FR-CJC

JUDGE: Judge Thierry Patrick Colaw

COMPLAINT FOR DAMAGES FOR:

**1. INTENTIONAL DISCRIMINATION
IN VIOLATION OF THE UNRUH CIVIL
RIGHTS ACT;**

**2. INTENTIONAL
MISREPRESENTATION;**

**3. NEGLIGENT
MISREPRESENTATION;**

**4. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;**

**5. NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS;**

6. MEDICAL NEGLIGENCE

7. BATTERY

JURY TRIAL DEMAND

Plaintiffs MICHAEL ALAN MALTESE, ROWENA JAVIER MALTESE, and EVAN
MALTESE, a minor, by and through his Guardian ad Litem, MICHAEL ALAN MALTESE
("Plaintiffs,"), allege as follows:

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GENERAL ALLEGATIONS

1. At all times relevant herein, Plaintiffs were and are residents of the County of Orange, State of California.

2. Plaintiff MICHAEL ALAN MALTESE has applied to this Court for permission to bring causes of action on behalf of EVAN MALTESE as his Guardian ad Litem. MICHAEL ALAN MALTESE is a proper party to bring suit on EVAN MALTESE's behalf pursuant to *Code of Civil Procedure* section 376.

3. Plaintiffs are informed and believe and thereon allege that Defendants KAISER FOUNDATION HEALTH PLAN, INC.; KAISER FOUNDATION HOSPITALS; and SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP; and DOES 1 through 100, Inclusive, ("Defendants,"), at all times relevant herein, were business entities, form unknown, doing business in the County of Orange, State of California.

4. Plaintiffs are ignorant of the true names and capacities of Defendants, sued herein as DOES 1 through 100, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs shall amend this Complaint to include the true names and capacities of DOES 1-50 when ascertained. Plaintiffs are informed and believe, and thereon allege, that all Defendants, and each of them, are in some manner responsible for the events and happenings herein alleged, and have proximately caused the injuries and damages alleged by Plaintiffs.

5. Plaintiffs are informed and believe, and thereon allege that at all times herein mentioned, each of the DOE Defendants was the agent, servant, and employee of the remaining Defendants, and at all times herein mentioned, each was acting within the time, place and scope of said agency and employment.

6. The injury upon which this action is based occurred in the County of Orange, State of California. Jurisdiction and venue are also proper in this Court because one or more of the Defendants resides in the County of Orange, California.

7. EVAN MALTESE suffers and at all times relevant to this action suffered from a genetic condition known as 2-hydroxyglutaric aciduria.

1 8. Plaintiffs allege 2-hydroxyglutaric aciduria is a medical condition causing
2 physical and mental disability as defined by Government Code section 12926. Plaintiffs
3 additionally allege 2-hydroxyglutaric aciduria is a medical condition causing physical and mental
4 disability as defined by Section 12102 of the Americans With Disabilities Act of 1990.

5 9. On information and belief, Plaintiffs allege Defendants actually or constructively
6 knew EVAN MALTESE suffered from 2-hydroxyglutaric aciduria as of January 25, 2007. On
7 or about March 21, 2007, further testing confirmed EVAN MALTESE suffered from the D-2
8 form of hydroxyglutaric aciduria.

9 **FIRST CAUSE OF ACTION FOR INTENTIONAL DISCRIMINATION**

10 **IN VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

11 (By MICHAEL ALAN MALTESE, as Guardian Ad Litem for
12 EVAN MALTESE, Against All Defendants)

13 10. Plaintiffs hereby reference Paragraphs 1 through 9 of this complaint and make
14 them a part of this cause of action, as though fully set forth herein.

15 11. On or about April 3, 2007, Defendants intentionally and inappropriately
16 prescribed EVAN MALTESE morphine sulfate, a powerful vasodepressive drug, as well as
17 lorazepam and phenobarbital.

18 12. The use of the above-referenced compounds had no therapeutic intent or benefit
19 for EVAN MALTESE. On information and belief, the above-referenced drugs were knowingly
20 and intentionally used by Defendants upon EVAN MALTESE in order to hasten his death.

21 13. Defendants and each of them or their agents instructed MICHAEL ALAN
22 MALTESE and ROWENA JAVIER MALTESE to inject EVAN MALTESE with morphine at
23 home. As a proximate result of the injections and Defendants' intentional discrimination, on or
24 about July 28, 2008 EVAN MALTESE suffered a severe hypoxic episode, requiring emergent
25 medical treatment and causing him permanent brain damage.

26 14. The sole or substantial motivating factor for the above course of action was the
27 fact EVAN MALTESE suffered from a physical and/or mental disability, not actual medical

1 need. EVAN MALTESE was thus denied full and equal medical services on the basis of his
2 disability.

3 15. The foregoing intentional discrimination was perpetrated in violation of *Civil*
4 *Code* section 51 *et seq.*

5 **SECOND CAUSE OF ACTION FOR INTENTIONAL MISREPRESENTATION**

6 (By MICHAEL ALAN MALTESE and

7 ROWENA JAVIER MALTESE Against All Defendants)

8 16. Plaintiffs hereby reference Paragraphs 1 through 15 of this complaint and make
9 them a part of this cause of action, as though fully set forth herein.

10 17. Upon selecting Defendants to provide medical care and treatment for EVAN
11 MALTESE, Plaintiffs relied on the representations of Defendants, and each of them, that the
12 Defendants were committed to providing them with the highest quality of medical care available
13 and that Defendants had systems in place to ensure appropriate care was provided to Plaintiffs'
14 child EVAN MALTESE.

15 18. These representations were relayed to Plaintiffs either orally, in writing, or by
16 nonverbal conduct, examples being the statement in Defendants' Individual Plan Membership
17 Agreement and Disclosure Form and Evidence of Coverage for Kaiser Permanente for
18 Individuals and Families that Defendants would provide "medical care[,] "work together to
19 provide [their] Members with quality care" and give Plaintiffs "access to all of the covered
20 Services" Plaintiffs needed. Defendants' fraudulent misrepresentations so infected the parties'
21 Agreement as to render it and any sub-agreement void *ab initio*.

22 19. In reliance upon Defendants' representations Plaintiffs and EVAN MALTESE
23 would receive medical treatment, Plaintiffs agreed to select Defendants as their physicians to
24 provide medical services to EVAN MALTESE.

25 20. At various times, Defendants represented to Plaintiffs that important facts were
26 true. Plaintiffs are informed and believe, and thereon allege, that Defendants intentionally
27 misrepresented, in writing, orally, or by their conduct, the following:

- 1 a. That Defendants were committed to providing Plaintiffs and EVAN
2 MALTESE with quality medical care; and
3 b. That the treatment provided to EVAN MALTESE was not intended to
4 hasten his death.

5 21. Defendants, and each of them, knew that the representations were false when they
6 were made and they made the representations recklessly and without regard for their truth. The
7 truth of the matter was that Defendants would not provide therapeutic care under certain
8 circumstances, and intentionally withheld that information from Plaintiffs.

9 22. Defendants, and each of them, intended that Plaintiffs rely on the above
10 misrepresentations in making decisions regarding EVAN MALTESE's care. Plaintiffs
11 reasonably relied on the representations made by Defendants, and each of them.

12 23. As a direct and legal result of the foregoing intentional concealments by the
13 Defendants, and each of them, of which Plaintiffs were at all times relevant herein unaware,
14 EVAN MALTESE suffered a severe hypoxic event and Plaintiffs suffered general and special
15 damages as elsewhere alleged herein.

16 24. Plaintiffs only discovered the fraudulent conduct alleged in this cause of action
17 upon reading the Hospice Admission Report of EVAN MALTESE for the first time in April
18 2012.

19 **THIRD CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION**

20 (By MICHAEL ALAN MALTESE and

21 ROWENA JAVIER MALTESE Against All Defendants)

22 25. Plaintiffs hereby reference Paragraphs 1 through 15 of this complaint and make
23 them a part of this cause of action, as though fully set forth herein.

24 26. Upon selecting Defendants to provide medical care and treatment for EVAN
25 MALTESE, Plaintiffs relied on the representations of Defendants, and each of them, that the
26 Defendants were committed to providing them with the highest quality of medical care available
27 and that Defendants had systems in place to ensure appropriate care was provided to Plaintiffs'

1 child. These representations were relayed to Plaintiffs either orally, in writing, or by nonverbal
2 conduct.

3 27. Plaintiffs relied on the representations of Defendants, and each of them, that they
4 possessed appropriate medical skill, knowledge, excellence, and ethics as medical providers
5 regarding the medical care and treatment of any medical condition that afflicted or may have
6 afflicted EVAN MALTESE.

7 28. In reliance upon such representations, Plaintiffs agreed to select Defendants as
8 their physicians to provide medical services to EVAN MALTESE due to the representations that
9 he would receive appropriate medical treatment.

10 29. At various times, Defendants represented to Plaintiffs that important facts were
11 true. Plaintiffs are informed and believe, and thereon allege, that Defendants intentionally
12 misrepresented, verbally, orally, or by their conduct, the following:

- 13 a. That Defendants were committed to providing Plaintiffs and EVAN
14 MALTESE with the highest quality of care available;
- 15 b. That the treatment provided to EVAN MALTESE was medically
16 necessary, when indeed the course of treatment selected by Defendants
17 was motivated by concerns that Defendants would be required to expend
18 vast sums to provide care for EVAN MALTESE if he survived; and
- 19 c. That the treatment provided to EVAN MALTESE was not intended to
20 hasten his death.

21 30. Defendants, and each of them, should have known that the representations were
22 false when they were made or that they made the representations in a negligent fashion without
23 regard for their truth.

24 31. Defendants, and each of them, intended that Plaintiffs rely on the representations.

25 32. Plaintiffs reasonably relied on the representations made by Defendants, and each
26 of them. As a result, the Plaintiffs were harmed and sustained damages.

1 33. The Plaintiffs' reliance on the representations of Defendants, and each of them,
2 was a substantial factor in causing the harm and damages sustained by Plaintiffs.

3 34. The negligent misrepresentations of the Defendants, and each of them, were made
4 in the course of their fiduciary duty as health care providers who were providing medical advice,
5 care, and treatment to Plaintiffs' child, which was a substantial factor in causing all of the
6 damages alleged herein including general damages for mental pain and suffering and emotional
7 distress.

8 35. Plaintiffs only discovered the fraudulent conduct alleged in this cause of action
9 upon reading the Hospice Admission Report of EVAN MALTESE for the first time in April
10 2012.

11 **FIFTH CAUSE OF ACTION FOR INTENTIONAL INFLICTION**
12 **OF EMOTIONAL DISTRESS**

13 (By MICHAEL ALAN MALTESE and ROWENA JAVIER

14 MALTESE Against All Defendants)

15 36. Plaintiffs hereby reference Paragraphs 1 through 24 of the complaint and make
16 them a part of this cause of action, as though fully set forth herein.

17 37. Defendants and each of them or their agents instructed MICHAEL ALAN
18 MALTESE and ROWENA JAVIER MALTESE to inject EVAN MALTESE with morphine at
19 home, as part of his hospice care plan.

20 38. On or about July 28, 2008, as a result of injections prescribed as part of
21 Defendants' inappropriate hospice care plan, EVAN MALTESE suffered a severe hypoxic
22 episode, requiring emergent medical treatment and causing him permanent damage.

23 39. At all times mentioned herein, Defendants and each of them engaged in
24 outrageous unprivileged conduct that was either intended to cause harm to Plaintiffs or was done
25 in reckless disregard of the probability of causing Plaintiffs to suffer emotional distress. More
26 specifically, the extreme and outrageous conduct of the Defendants, and each of them, arises
27 from the abuse of a position of trust and fiduciary duty between the parties, which gave the

1 Defendants and each of them actual or apparent authority over Plaintiffs, or the power to
2 wrongfully affect the Plaintiffs' interests.

3 40. As a legal result of the conduct of the Defendants and each of them, the Plaintiffs
4 suffered severe emotional distress including, but not limited to, mental distress, mental suffering,
5 mental anguish, unpleasant mental reactions such as fright, nervousness, grief, anxiety, worry,
6 shocking, humiliation, and indignity, as well as physical pain. Furthermore, as a legal result of
7 the conduct of Defendants and each of them, Plaintiffs suffered severe emotional distress of such
8 substantial quantity and enduring quality that no reasonable person should have been expected to
9 endure it. Therefore, they are entitled to general damages as is described more fully
10 hereinabove.

11 41. In doing the acts as alleged herein, Defendants and each of them acted recklessly
12 and in violation of fundamental public policy and in reckless disregard of the health, life, and
13 safety of Plaintiffs.

14 42. As a proximate result of the conduct of the Defendants' decision to unnecessarily
15 relegate EVAN MALTESE to the above-described course of treatment, Plaintiffs were hurt and
16 injured in their health, strength, and activity, sustaining injury to their body and shock and injury
17 to their nervous system and person, all of which said injuries have caused and continue to cause
18 Plaintiffs great mental, physical, and nervous pain and suffering in an amount in excess of the
19 minimum jurisdictional limits of this Court.

20 43. As a further proximate results of said conduct of Defendants, Plaintiffs were
21 required to and did employ, and will be required in the future to employ, physicians and surgeons
22 to examine, treat, and care for them and did incur, and will in the future incur, medical and
23 incidental expenses. The exact amount of such expense is unknown to Plaintiffs at this time, and
24 Plaintiffs will ask leave to amend this pleading to set forth the exact amount thereof when the
25 same is ascertained.

26 44. As a further proximate result of said conduct of Defendants, Plaintiffs were
27 prevented from attending to their usual occupation and Plaintiffs are informed and believe and
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1 therefore allege, that they will be prevented from attending to their usual occupation for a period
2 of time in the future, all to Plaintiffs' further damage in an amount unknown at this time, and
3 Plaintiffs will ask leave to amend their complaint to show the exact amount when determined.

4 45. Plaintiffs allege any statute of limitations applicable to this cause of action was
5 tolled as a result of the fraudulent conduct of Defendants set forth in paragraphs 1 through 24 of
6 this Complaint, which are included by reference as part of this cause of action as though fully set
7 forth herein.

8 **SIXTH CAUSE OF ACTION FOR NEGLIGENT INFLECTION**
9 **OF EMOTIONAL DISTRESS**

10 (By MICHAEL ALAN MALTESE and
11 ROWENA JAVIER MALTESE Against All Defendants)

12 46. Plaintiffs hereby reference Paragraphs 1 through 15 and 25 through 35 of the
13 complaint and make them a part of this cause of action, as though fully set forth herein.

14 47. At all times mentioned herein, Plaintiffs MICHAEL ALAN MALTESE and
15 ROWENA JAVIER MALTESE were the parents of EVAN MALTESE, a patient of Defendants.
16 Plaintiffs were present during his birth, delivery, and subsequent medical treatment. Plaintiffs
17 observed and witnessed various events at the time they occurred through their own sensory
18 perceptions, including the physical injuries sustained by EVAN MALTESE, due to the negligent
19 conduct of Defendants in improperly relegating EVAN MALTESE to hospice care and
20 prescribing him injections of morphine sulfate, Ativan and phenobarbital.

21 48. Defendants and each of them or their agents instructed MICHAEL ALAN
22 MALTESE and ROWENA JAVIER MALTESE to inject EVAN MALTESE with morphine at
23 home, as part of his hospice care plan.

24 49. On or about July 28, 2008, as a result of injections prescribed as part of
25 Defendants' inappropriate hospice care plan, EVAN MALTESE suffered a severe hypoxic
26 episode, requiring emergent medical treatment and causing him permanent damage.

50. Defendants' conduct was extreme and outrageous, causing and continuing to cause emotional distress to Plaintiffs.

51. As a further proximate results of said conduct of Defendants, Plaintiffs were required to and did employ, and will be required in the future to employ, physicians and surgeons to examine, treat, and care for them and did incur, and will in the future incur, medical and incidental expenses. The exact amount of such expense is unknown to Plaintiffs at this time, and Plaintiffs will ask leave to amend this pleading to set forth the exact amount thereof when the same is ascertained.

52. As a further proximate result of said conduct of Defendants, Plaintiffs were prevented from attending to their usual occupation and Plaintiffs are informed and believe and therefore allege, that they will be prevented from attending to their usual occupation for a period of time in the future, all to Plaintiffs' further damage in an amount unknown at this time, and Plaintiffs will ask leave to amend their complaint to show the exact amount when determined.

53. Plaintiffs allege any statute of limitations applicable to this cause of action was tolled as a result of the fraudulent conduct of Defendants set forth in paragraphs 1 through 24 of this Complaint, which are included by reference as part of this cause of action as though fully set forth herein.

SEVENTH CAUSE OF ACTION FOR MEDICAL NEGLIGENCE

(By EVAN MALTESE, by and through his Guardian ad Litem,

MICHAEL ALAN MALTESE, Against All Defendants)

54. Plaintiffs hereby reference Paragraphs 1 through 15 of the complaint and make them a part of this cause of action, as though fully set forth herein.

55. At all times relevant herein Plaintiffs engaged for compensation the services of Defendants to examine, diagnose, prescribe medications for, treat, handle, and provide competent medical consultant advice for the care, treatment and diagnosis of EVAN MALTESE.

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1 56. Defendants therefore owed a duty to use the skill, knowledge and care in the
2 diagnosis and treatment of EVAN MALTESE that other members of their profession would have
3 possessed and used in the same or similar circumstances.

4 57. Upon information and belief, Defendants, either directly or acting through their
5 technicians, staff, employees, and administrators, breached their duty of care by failing to exercise
6 the level of skill, knowledge, and care in the diagnosis and treatment of EVAN MALTESE that
7 other reasonably careful physicians would have used in the same or similar circumstances.

8 58. Namely, Defendants prescribed for EVAN MALTESE quantities and types of
9 medications not warranted under the circumstances.

10 59. Upon information and belief, Defendants and each of them further breached their
11 duty by failing to perform adequate specific training of their employees, staff and personnel in the
12 proper prescribing of medications, and by failing to have adequate policies and procedures and
13 protocols in place regarding the proper prescribing, dosage, and follow-up for patients such as
14 EVAN MALTESE.

15 60. As a proximate result of the negligence of the Defendants and DOES 1 through 50,
16 inclusive, and each of them, as described above, EVAN MALTESE suffered a severe hypoxic
17 episode that has caused him devastating and permanent injuries.

18 61. As of the date of the filing of this Complaint, EVAN MALTESE has not reached
19 his eighth birthday.

20 **SEVENTH CAUSE OF ACTION FOR BATTERY**

21 (BY EVAN MALTESE, by and through his Guardian ad Litem,

22 MICHAEL ALAN MALTESE, Against All Defendants)

23 62. Plaintiffs hereby reference Paragraphs 1 through 15 of the complaint and make
24 them a part of this cause of action, as though fully set forth herein.

25 63. By engaging in the acts previously described in this Complaint, Defendants and
26 each of them intentionally caused Plaintiff EVAN MALTESE to repeated harmful and unlawful
27 touchings. Those touchings were such that any reasonable person would have been offended as a

1 result.

2 64. All of the above-described unlawful and harmful touchings were perpetrated in
3 the absence of any effective consent by or on behalf of Plaintiff EVAN MALTESE.

4 65. Plaintiff EVAN MALTESE suffered permanent, devastating harm as a proximate
5 result of the touching. As a further direct and proximate result of the acts of the Defendants, and
6 each of them, Plaintiff EVAN MALTESE sustained severe emotional disturbance, shock, and
7 injury to Plaintiff's nervous system and person, all to Plaintiff's general damage in a sum within
8 the jurisdiction of this court and according to proof at the time of trial of this action.

9 66. As a direct and proximate result of the acts and omissions of the Defendants, and
10 each of them, and the injuries resulting therefrom, Plaintiff EVAN MALTESE has required and
11 will in the future require the services of physicians, surgeons, hospitals, and other medical or
12 medically-related personnel and equipment including medications, x-rays, and other medical
13 expenses; that the exact and reasonable amount of said liabilities incurred and to be incurred is
14 unknown to Plaintiff at this time and Plaintiff will ask leave to prove the reasonable value at the
15 time of trial of this action.

16 **DAMAGES PRAYER**

17 WHEREFORE, Plaintiffs pray for judgment against the Defendants and each of them as follows:

- 18 1. As to the First Cause of Action (Intentional Discrimination in Violation of the
19 Unruh Civil Rights Act):
- 20 a. General and special damages in a sum in excess of the minimum
21 jurisdictional limits of the above-entitled Court, according to proof, but in
22 a minimum of \$4,000 as provided by *Civil Code* section 52;
- 23 b. Sums incurred and to be incurred for the services of hospitals, clinics,
24 physicians, surgeons, and other health care professionals, as well as for
25 medicines, medical supplies and other health care services;
- 26 c. For attorneys fees, pre-judgment interest, and costs of suit as provided by
27 law;

- d. Loss of earnings capacity according to proof;
- e. Treble damages pursuant to *Civil Code* section 52; and
- f. For such other and further relief as the court may deem just and proper.

2. As to the Second and Third Causes of Action (Intentional and Negligent Misrepresentation):

- a. General and special damages in a sum in excess of the minimum jurisdictional limits of the above-entitled Court, according to proof;
- b. Sums incurred and to be incurred for the services of hospitals, clinics, physicians, surgeons, and other health care professionals, as well as for medicines, medical supplies and other health care services;
- c. For pre-judgment interest, and costs of suit as provided by law;
- d. Loss of earnings and earnings capacity according to proof;
- e. For such other and further relief as the court may deem just and proper.

3. As to the Fourth and Fifth Causes of Action (Intentional and Negligent Infliction of Emotional Distress):

- a. General and special damages in a sum in excess of the minimum jurisdictional limits of the above-entitled Court, according to proof;
- b. Loss of earnings and earnings capacity according to proof;
- c. For pre-judgment interest, and costs of suit as provided by law; and
- d. For such other and further relief as the court may deem just and proper.

4. As to the Sixth and Seventh Causes of Action (Medical Negligence and Battery):

- a. General and special damages in a sum in excess of the minimum jurisdictional limits of the above-entitled Court, according to proof;

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- 1 b. Sums incurred and to be incurred for the services of hospitals, clinics,
2 physicians, surgeons, and other health care professionals, as well as for
3 medicines, medical supplies and other health care services;
4 c. Loss of earnings capacity according to proof;
5 d. For pre-judgment interest and costs as provided by law;
6 e. For such other and further relief as the court may deem just and proper.
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8 DATED: May 12, 2014

HODES MILMAN LIEBECK, LLP

9
10 By: 

DANIEL M. HODES
JASON M. CARUSO
Attorneys for Plaintiffs

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13 **JURY TRIAL DEMAND**

14 Plaintiffs hereby request a jury on all issues so triable.

15 DATED: May 12, 2014

HODES MILMAN LIEBECK, LLP

16
17 By: 

DANIEL M. HODES
JASON M. CARUSO
Attorneys for Plaintiffs