

Justin L. Ward, Esq. SBN 225363
THE WARD FIRM
901 H Street, Suite 601
Sacramento, CA 95814
Tel: (916) 443-2474
Fax: (916) 209-8628
Email: justin@jlwardfirm.com

Attorney for Plaintiff
MICHAEL LOUDON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SACRAMENTO

MICHAEL LOUDON,

PLAINTIFF,

v.

MICHAEL NOVOTNY; KAISER
PERMANENTE; AND DOES 1-20,

DEFENDANTS.

CASE NO.:

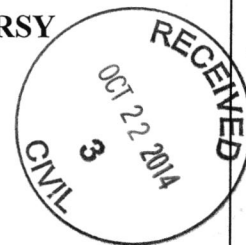
COMPLAINT FOR DAMAGES:

1. Assault
2. Battery
3. Negligent Hiring, Training and Supervision
4. Intentional Infliction of Emotional Distress

UNLIMITED CIVIL CASE

**AMOUNT IN CONTROVERSY
EXCEEDS \$25,000**

JURY DEMAND



PARTIES

1. Plaintiff MICHAEL LOUDON(hereinafter listed as "Plaintiff") is a resident of the State of California, and the County of Sacramento.

2. Defendant MICHAEL NOVOTNY (hereinafter listed as "NOVOTNY") is and at all times mentioned herein an individual, employed in the City of Sacramento, and County of Sacramento, by a municipal corporation or political subdivision of the United States, organized and existing under the laws of the State of California.

3. Defendant KAISER PERMANENTE (hereinafter listed as “KAISER”) is and at all times mentioned herein was a municipal corporation or political subdivision of the United States, organized and existing under the laws of the State of California.

4. Plaintiff is unaware of the true names and capacities of those Defendants sued herein as DOE Defendants. Plaintiff will amend this complaint to allege said Defendants' true names and capacities when that information becomes known to him. Plaintiff is informed, believes, and thereon alleges that these DOE Defendants are legally responsible and liable for the incident, injuries and damages hereinafter set forth, and that each of said Defendants proximately caused the injuries and damages by reason of neglect, careless, deliberately indifferent, intentional, willful or wanton misconduct, including the neglect, careless, deliberately indifferent, intentional, willful or wanton misconduct, including the negligent, careless, deliberately indifferent, intentional, willful or wanton misconduct creating and otherwise causing the incidents, conditions and circumstances hereinafter set forth, or by reason of direct or imputed negligence or vicarious fault of breach of duty arising out of the matters herein alleged. Plaintiff will seek leave to amend this complaint to set forth said true names and identities of the unknown named DOE Defendants when they are ascertained.

5. Each of the individual Defendants sued herein is sued both in his individual and personal capacity, as well as in his official capacity.

6. Plaintiff is informed, believes, and therefore alleges that, at all times herein mentioned, each of the Defendants was the agent and/or employee and/or co-conspirator of each of the remaining Defendants, and in doing the things hereinafter alleged, was acting within the scope of such agency, employment and/or conspiracy and with the permission and consent of other co-defendants.

JURISDICTION AND VENUE

7. The amount in controversy exceeds the minimum amount required to bring the case within the Unlimited Jurisdiction of this Court.

1 8. Venue is proper in this Court because the acts or omissions giving rise to the
2 action occurred in the City of Sacramento and County of Sacramento, and because at least one
3 Defendant operates in the County of Sacramento.
4

5 **FACTS COMMON TO ALL COUNTS**

6 9. This complaint concerns an incident that occurred on the afternoon of October 22,
7 2013, at the Kaiser Permanente Medical Group hospital located at 2025 Morse Avenue in the
8 City of Sacramento, County of Sacramento. Plaintiff arrived at the hospital for a check-up of his
9 penis pump, which had been previously installed, but was not working properly. He was
10 examined by NOVOTNY.

11 10. During NOVOTNY'S examination of Plaintiff, NOVOTNY handled Plaintiff's
12 penis in an unacceptable and painful manner. NOVOTNY squeezed Plaintiff's penis pump as
13 many as six to seven times in an apparent attempt to cycle the non-working pump. After a few
14 pumps the pain NOVOTNY was inflicting on Plaintiff was immeasurable. Plaintiff yelled out in
15 pain several times and asked that NOVOTNY stop but, his pleas went ignored and NOVOTNY
continued to vigorously squeeze Plaintiff's penis.

16 11. When the pain was just too intolerable, Plaintiff reached down from his standing
17 position and simply swept NOVOTNY'S hands off and away from Plaintiff's scrotum. At this
18 time, NOVOTNY stood from his examining stool and hit Plaintiff with both hands in the chest.
19 During this action NOVOTNY screamed out, "DO NOT TOUCH THE DOCTOR!" The push
20 resulted in Plaintiff falling backwards over his wheelchair causing him to hit the floor. Plaintiff
21 immediately felt pain throughout his lower body, especially his left leg. NOVOTNY's
22 unexpected, unprofessional behavior immediately forced Plaintiff to respond in self-defense.
23 With Plaintiff's pants still around his ankles, Plaintiff returned to his standing position and
24 lunged towards NOVOTNY with out-stretched arms in self-defense. NOVOTNY grabbed
25 Plaintiff's right wrist with both his hands and Plaintiff gave a verbal warning that NOVOTNY,
26 "not make the mistake of manhandling me." Plaintiff then told NOVOTNY not to touch him
anymore and started to dress himself.

27 12. After the incident Plaintiff immediately went to Member Services to file a
28 complaint against NOVOTNY. The following morning Plaintiff awoke to a bruised left calf.

1 The bruise occurred after NOVOTNY pushed Plaintiff which resulted in Plaintiff's left calf
2 hitting the lever of his wheelchair.

3
4 **FIRST CAUSE OF ACTION**

5 **(By Plaintiff MICHAEL LOUDON Against Defendants MICHAEL NOVOTNY; KAISER
6 PERMANENTE; AND DOES 1-20 for Civil Assault)**

7 15. Plaintiff restates and incorporates by reference the foregoing paragraphs of this
8 complaint as if set forth in full at this point. All claims asserted herein against Defendants
9 MICHAEL NOVOTNY; KAISER PERMANENTE; AND DOES 1-20 are presented pursuant to
10 their vicarious liability for acts and omissions of employees undertaken in the course and scope
11 of their employment.

12 16. Defendant KAISER PERMANENTE is an entity that employed doctor
13 NOVOTNY.

14 17. Under supervision of KAISER PERMANENTE on October 22, 2013, Defendant
15 NOVOTNY lifted both of his hands and hit Plaintiff in the chest. NOVOTNY did this with the
16 intent to cause and so caused Plaintiff to suffer apprehension of an immediate harmful contact.
17 As Plaintiff was under reasonable suspicion that he was being treated by the doctor at the time of
18 the incident, he was expressly under the care and protection of doctor NOVOTNY, and by
19 extension, Defendant KAISER PERMANENTE.

20 18. As a proximate result of the above-mentioned conduct of Defendants, and
21 each of them, Plaintiff has suffered and continues to suffer severe and permanent injury to his
22 mind and body. Additionally, Plaintiff was required to employ and did employ physicians to
23 examine, treat, and care for him, and incurred additional medical expenses for treatment, and
24 other incidental medical expenses in an amount according to proof at trial.

25 19. The aforementioned acts of the individual defendants were willful, wanton,
26 malicious and oppressive, and justify the awarding of exemplary and punitive damages as against
27 the individual defendants named herein.
28

//

//

//

//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE OF ACTION

(By Plaintiff MICHAEL LOUDON Against Defendants MICHAEL NOVOTNY; KAISER PERMANENTE; AND DOES 1-20 for Battery)

20. Plaintiff restates and incorporates by reference the foregoing paragraphs of this complaint as if set forth in full at this point. All claims asserted herein against Defendants MICHAEL NOVOTNY; KAISER PERMANENTE; AND DOES 1-20 are presented pursuant to their vicarious liability for acts and omissions of municipal employees undertaken in the course and scope of their employment.

21. On the afternoon of October 22, 2013, in the City of Sacramento, County of Sacramento, Defendant NOVOTNY used unreasonable and unnecessary force upon the person of Plaintiff by intentionally hitting Plaintiff's chest and pushing him to the floor. Plaintiff suffered severe injuries as a direct and proximate result of violent contact made by defendant NOVOTNY.

22. Both prior to and during the time in which Plaintiff was being hit and thrown to the ground, Plaintiff was not armed with any kind of weapon, and posed no reasonable threat of violence to Defendant NOVOTNY, nor to any other individual. Both prior to and during the time in which he was battered, Plaintiff made no aggressive movements, no furtive gestures, and no physical movements which would suggest to a reasonable person that he was armed with any kind of weapon, or had the will, or the ability to inflict substantial bodily harm against an individual. Both prior to and during the time in which defendant NOVOTNY battered Plaintiff, he was not faced with any circumstances which would have led a reasonable person to believe that Plaintiff posed a risk of death, or serious bodily injury to any person. Both prior to and during the time in which the defendant battered Plaintiff, Plaintiff did not consent to the use of force used upon him. In committing the acts described herein, the defendant subjected Plaintiff to unreasonable harm to his person, in violation of California Civil Code, Section 43.

23. As a proximate result of the above-mentioned conduct of Defendants, and each of them, Plaintiff has suffered and continues to suffer severe and permanent injury to his mind and body. Additionally, Plaintiff was required to employ and did employ physicians to examine, treat, and care for him, and incurred additional medical expenses for treatment, and other incidental medical expenses in an amount according to proof at trial.

1 24. The aforementioned acts of the individual defendants were willful, wanton,
2 malicious and oppressive, and justify the awarding of exemplary and punitive damages as against
3 the individual defendants named herein.

4 **THIRD CAUSE OF ACTION**
5 **(By Plaintiff MICHAEL LOUDON Against**
6 **Defendant KAISER PERMANENTE for Negligent Hiring, Training and Supervision)**

7 25. Plaintiff restates and incorporates by reference the foregoing paragraphs of
8 this complaint as if set forth in full at this point.

9 26. Plaintiff is informed and believes, and thereon alleges, that on and before
10 October 22, 2013, Defendant NOVOTNY and DOES 1 through 20, were individual employees
11 of KAISER PERMANENTE, who were responsible for hiring and supervising the defendant
12 doctors.

13 27. Plaintiff is informed and believes, and thereon alleges the defendant KAISER
14 PERMANENTE, negligently hired, trained, supervised, employed and/or managed defendant
15 employees, in that KAISER PERMANENTE, knew or, in the exercise of reasonable diligence,
16 should have known, that the defendant doctors were dangerous and violent employees, prone to
17 injure individuals without reasonable justification, and in a manner that would demonstrate
18 callous disregard for the rights and safety of civilian citizens, and assault and batter persons
19 and/or use unnecessary, unreasonable, and/or unlawful physical force without reasonable
20 justification. All of these negligent acts proximately caused Plaintiff's injuries on October 22,
21 2013.

22 28. Before October 22, 2013, DOES 1 through 20, and individual employees of
23 KAISER PERMANENTE who were responsible for hiring, training, and supervising Kaiser
24 Permanente staff including defendant staff, had the means and the ability to properly train such
25 staff, and despite having notice and knowledge of the need to properly train such staff, failed to
26 exercise ordinary and reasonable care in the training and supervision of Kaiser Permanente staff,
27 including defendant DOES 1 through 20, by actions and inactions which included, but were not
28 limited to:

1 a) negligently failing to properly train and supervise doctors and staff,
2 including defendant DOES of the reasonableness, safety, and constitutionality of the use of
3 excessive force against patients;

4 b) negligently failing to develop a tactically sound plan for handling an
5 individual once they have expressed pain in treatment and the doctor continues to use force;

6 29. All of these negligent acts proximately caused Plaintiff's injuries on October
7 22, 2013, and are a proximate result of the above-mentioned conduct of Defendants. Due to the
8 actions of each defendant, Plaintiff suffered physical damage and injury to his body, and has
9 suffered and continues to suffer severe, injury to his mind and body, and has incurred substantial
10 litigation expenses. Additionally, Plaintiff was required to employ and did employ physicians to
11 examine, treat, and care for him, and incurred additional medical expenses for treatment, and
12 other incidental medical expenses in an amount according to proof at trial.

13 30. Plaintiff hereby demands that a jury be empanelled for the trial of this matter.

14 **FOURTH CAUSE OF ACTION**

15 **(By Plaintiff MICHAEL LOUDON Against MICHAEL NOVOTNY; KAISER
16 PERMANENTE; AND DOES 1-20 for Intentional Infliction of Emotional Distress)**

17 31. Plaintiff restates and incorporates by reference the foregoing paragraphs of
18 this complaint as if set forth in full at this point.

19 32. Defendant KAISER PERMANENTE is an entity that employed doctor
20 NOVOTNY and Does 1-20.

21 33. Under the supervision of KAISER PERMANENTE, Defendant NOVOTNY
22 and Does 1-20 willfully and intentionally harmed Plaintiff physically and caused Plaintiff to fear
23 further harm and to suffer emotional damage when participating in the conduct as described in
24 the paragraphs above.

25 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 26 1. For general damages in an amount to be determined according to proof at trial;
27 3. For medical and related expenses according to proof at trial;
28 4. For costs of suit incurred herein;

1 5. For punitive damages against the individual defendants in their individual
2 capacities in an amount to be determined according to proof at trial;

3 6. For attorneys' fees, investigation fees, and expert witness fees incurred herein;
4 and ;

5 7. For such other and further relief as the Court deems just and proper.

6
7 Dated this: October 22, 2015

By: THE WARD FIRM

8
9
10 
11 Justin L. Ward, Esq.
12 Attorney for Plaintiff
13 MICHAEL LOUDON
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIVED
CIVIL DROP BOX

2015 OCT 22 PM 1:46

GDSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

Courthouse News Service