

PETER W. ALFERT, SBN 83139  
MARK T. BALLER, SBN 261331  
HINTON ALFERT SUMNER & KAUFMANN  
1646 N. California Blvd., Suite 600  
Walnut Creek, California 94596  
Telephone: (925) 932-6006  
Facsimile: (925) 932-3412

TODD BOLEY, SBN 64119  
1212 Broadway, 16th Floor  
Oakland, CA 94612  
Telephone: (510) 836-4500  
Facsimile: (510) 649-5170

Attorneys for Plaintiffs

FILED  
JAN 30 2012  
MAYAL LAW FIRM  
CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

File  
Paid  
ISS.  
G

ADR

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KEVIN PHELAN, CANEEL PHELAN, J.P., a  
minor by and through his guardian ad litem  
KEVIN PHELAN,

No. **C12-00465**

**COMPLAINT FOR DAMAGES**

[JURY DEMANDED]

Plaintiffs,

v.

BRENTWOOD UNION SCHOOL DISTRICT,  
DINA HOLDER, LAURI JAMES and DOES 1-  
30,

Defendants.

Plaintiffs KEVIN PHELAN, CANEEL PHELAN and J.P. , a minor by and through his  
guardian ad litem KEVIN PHELAN (hereinafter "J.P.") allege as follows:

**I. JURISDICTION AND VENUE**

1. Jurisdiction over Plaintiff's federal law claims is founded upon 28 U.S.C. § 1331 [federal  
question jurisdiction] and 28 U.S.C. § 1343(a)(3) [federal civil rights jurisdiction]. All claims for  
violation of Plaintiff's rights under the laws and the constitution of the United States are brought  
pursuant to 42 U.S. C. § 1983. This court has supplemental jurisdiction over Plaintiff's state law  
claims under 28 U.S.C. § 1367(a).

**II. INTRADISTRICT ASSIGNMENT**

2. This case arose in Contra Costa County, California and, pursuant to Rule 3-3(c) of the

1 Local Rules of the Northern District of California, should be assigned to either the San Francisco  
2 or Oakland Division of the Northern District.

3 **III. PARTIES**

4 3. Plaintiff KEVIN PHELAN is a resident of the City of Oakley, County of Contra Costa,  
5 California. He brings this action on his own behalf and as guardian ad litem for his son, J.P.

6 4. Plaintiff CANEEL PHELAN is a resident of the City of Brentwood, County of Contra  
7 Costa, California. She brings this action on her own behalf.

8 5. Plaintiff J.P. is a minor and a resident of the City of Oakley, County of Contra Costa,  
9 California.

10 6. Defendant DINA HOLDER ("Holder") is a teacher employed by the Brentwood School  
11 District, Brentwood, California. All actions alleged herein by Holder were taken under color of  
12 state law and in the course and scope of her employment with the Brentwood School District.

13 7. Defendant LAURI JAMES ("James") is the principal of Loma Vista School in the  
14 Brentwood School District, Brentwood California. All actions alleged herein by Holder were taken  
15 under color of state law and in the course and scope of her employment with the Brentwood School  
16 District.

17 8. The Brentwood School District is a public entity duly incorporated and operating under  
18 California law as a school district.

19 9. At all relevant times set forth herein, all Defendants acted in concert and as the agent of one  
20 another.

21 **IV. FACTUAL ALLEGATIONS**

22 10. At the time of the incidents alleged herein, J.P. was five years old and a pre-kindergarten  
23 student at Loma Vista Elementary School. He is approximately 3 ½ feet tall and weighs 60  
24 pounds.

25 11. J.P. received special education services due to autistic-type behaviors and a speech and  
26 language disorder since the fall of 2009. He is often reluctant to respond verbally and often  
27 responds to questions in whispers. He made good progress on his educational goals through the  
28 2009-2010 school year in many areas.

1           12. On May 25, 2010, J.P. was in his classroom. Holder grabbed him by the arm, dropped  
2 him to the floor and kicked him two times in the back in front of other students and aides in the  
3 classroom. This extreme level of discipline was a response to J.P.'s failure to join a circle of  
4 students at Holder's request. At the time she struck and kicked J.P., Ms. Holder was visibly and  
5 extremely emotionally upset. She was so agitated that one of the instructional aides present took  
6 her out of the room to calm her down. J.P. was reacted very badly to the incident and would not  
7 say anything. At the end of the school day, he had to be carried to the bus that took him home.

8           13. When he came home, J.P. did not tell his mother what had happened. On the morning of  
9 May 26, 2010, Caneel noticed a purple bruise on J.P.'s lower back. She asked J.P. how he got the  
10 bruise and he told her "I just got hurt at school, Mom." J.P. attended school on May 26 and 27.

11           14. Holder did not report the incident involving J.P. Instead, instructional aides assigned to  
12 J.P.'s class informed principal James on May 27, 2010. James reported the incident to District  
13 officials, but she did not contact Caneel or J.P.'s father at that time. The District officials whom  
14 James informed concerning the battery of J.P. did not contact Caneel or Kevin Phelan.

15           15. On May 27, 2010, Holder called Caneel Phelan. She told Caneel that she was "stressed  
16 out" and that she was frustrated with the children in her class. She did not mention any incident  
17 involving an injury to J.P. That evening, Caneel attended back to school night where she saw Ms.  
18 Holder. Neither Ms. Holder nor any other employee of the District mentioned any incident  
19 involving an injury to J.P.

20           16. School was not in session from May 28 to May 31, 2010. During the weekend, J.P. woke  
21 up at night complaining that he did not feel well.

22           17. On June 1, 2010, at approximately 11:00 a.m., Ms. Phelan received a call from Ms. James,  
23 the principal of Loma Vista School. Ms. James told her that an "incident" had occurred last week  
24 and they needed to her to come to school to discuss it. Ms. James would not provide any other  
25 information other than she needed to come to a meeting at 2:30 that afternoon. Caneel contacted  
26 Kevin Phelan and they came to the school as requested.

27           18. J.P.'s parents met with James, an aide from J.P.'s class and a representative of the  
28 District's Human Resources staff. They described the battery of J.P. by Holder as set forth above.

1 Neither parent had heard anything about the incident prior to attending this meeting.

2 19. James informed Caneel and Kevin Phelan that Holder had been placed on administrative  
3 leave. She said that the matter would be investigated, but that it would be confidential. Caneel and  
4 Kevin Phelan have received no further information regarding the incident, the results of any  
5 investigation or the response of the District to Holder's conduct.

6 20. Subsequent to her meeting with James on June 1, 2010, Caneel and Kevin Phelan have  
7 participated in meetings with the District concerning special education services to be provided to  
8 J.P. They and the District have agreed on the future educational plans and services that the District  
9 will provide to J.P. No dispute exists between Caneel or Kevin Phelan and the District regarding  
10 those plans and services.

11 21. As a further proximate result of Defendants' action as alleged herein, Plaintiff J.P. has  
12 suffered physical injury and pain and emotional distress and suffering. Plaintiffs Caneel Phelan  
13 and James Phelan have suffered emotional distress and suffering.

14 22. As a further proximate result of Defendants' actions as alleged herein, Plaintiffs Caneel  
15 Phelan and James Phelan have incurred and will continue to incur medical expenses.

16 23. Defendants Holder and James are guilty of malice and oppression as defined in Civil Code  
17 § 3294 in that they knew that their conduct as alleged herein was unnecessary, illegal, and likely to  
18 cause Plaintiff injury, but nonetheless intentionally and with conscious disregard of Plaintiff's  
19 safety engaged in that conduct.

20 24. Plaintiff has complied with all pre-filing requirements of Government Code §§ 910, et seq.  
21 Pursuant to California Government Code § 815.2(a), Defendant District is liable for the actions of  
22 Defendants Holder and James.

23 **FIRST CLAIM FOR RELIEF**

24 **(Violation of Constitutional Rights, 42 U.S.C. § 1983)**

25 25. Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 24  
26 inclusive, as if they were fully set forth herein.

27 26. Defendant Holder violated Plaintiff J.P.'s rights under the Fourth Amendment to the  
28 United States Constitution by actions, including but not limited to utilizing unjustified and

1 unreasonable force against Plaintiff.

2 27. Defendants District, Holder and James violated Plaintiffs Kevin Phelan, Caneel Phelan  
3 and J.P.'s rights under the Due Process Clause to the Fourteenth Amendment to the United States  
4 Constitution by actions, including but not limited to:

5 a. Intentionally interfering with the parent child relationship by concealing information  
6 regarding the physical and emotional trauma inflicted on J.P. by Holder.

7 b. Intentionally interfering with Kevin Phelan, Caneel Phelan and J.P.'s right to  
8 provide and receive nurture, support and comfort regarding a highly traumatic event.

9 28. Defendant District is liable, under 42 U.S.C. § 1983, for the violation of Plaintiff's  
10 constitutional rights by Holder and James in that:

11 a. The City failed to maintain adequate policies or conduct adequate training to  
12 prevent violations of the constitutional rights of students and parents. Violations such as the one  
13 inflicted on Plaintiffs were an obvious risk of the procedures adopted by the City and its  
14 policymakers. The City's actions and omissions constitute deliberate indifference.

15 b. The City was deliberately indifferent to the demonstrated propensity of Defendants  
16 Holder and James to violate the constitutional rights of citizens in the manner that Plaintiffs' rights  
17 were violated.

18 29. As a proximate result of the violations alleged in paragraphs 10 - 28, Plaintiffs have  
19 suffered damages as heretofore alleged.

20 **SECOND CLAIM FOR RELIEF**

21 **(Violation of Constitutional Rights, California Civil Code § 52.1)**

22 30. Plaintiff incorporates and realleges by reference the foregoing paragraphs 1 through 29 as  
23 if they were fully set forth herein.

24 31. The actions of Defendants, as alleged herein, constituted interference with Plaintiff's  
25 rights under the Fourth Amendment to the United States Constitution and the Constitution and laws  
26 of the State of California by threats, intimidation, and/or coercion in violation of California Civil  
27 Code § 52.1.

28 32. As a proximate result of Defendants' violation of § 52.1, Plaintiff has suffered damages as

1 alleged heretofore.

2 **THIRD CLAIM FOR RELIEF**

3 **(Battery)**

4 33. Plaintiff incorporates and realleges by reference the foregoing paragraphs 1 through 32,  
5 inclusive, as if they were fully set forth herein.

6 34. The use of force, as alleged herein, by Defendant Holder against Plaintiff J.P. constituted a  
7 battery.

8 35. As a proximate result of Defendants' illegal battery, Plaintiff has suffered damages as  
9 alleged heretofore.

10 **FOURTH CLAIM FOR RELIEF**

11 **(Intentional Infliction of Emotional Distress)**

12 36. Plaintiffs incorporates and realleges by reference the foregoing paragraphs 1 through 35,  
13 inclusive, as if they were fully set forth herein.

14 37. The actions of Defendants as alleged herein were outrageous, malicious and intended to and  
15 did inflict emotional distress and humiliation upon Plaintiffs.

16 38. As a proximate result of Defendants' intentional acts, Plaintiffs have incurred damages as  
17 alleged heretofore.

18 **FIFTH CLAIM FOR RELIEF**

19 **(Negligence)**

20 39. Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 37,  
21 inclusive, as if they were fully set forth herein.

22 40. Defendants owed Plaintiffs a duty to exercise reasonable care in their interactions with  
23 them. These Defendants failed to exercise reasonable care in their actions as alleged herein.

24 41. As a proximate result of Defendants' negligent acts, Plaintiffs have incurred damages as  
25 alleged heretofore.

26 **JURY DEMAND**

27 Plaintiff hereby demands that this matter be tried to a jury.

**PRAYER**

WHEREFORE, Plaintiffs prays for judgment as follows:

1. Compensatory damages to Plaintiff s for injury and for medical expenses;
2. Punitive damages against Defendants Holder and James and each of them;
3. Attorney's fees and costs; and
4. Such other and further relief as the court deems just and proper.

Dated: January 27, 2012



Mark T. Baller  
Attorneys for Plaintiffs

4:12-cv-465-LB  
ADZ ECF

JS 44 CAND (Rev. 12/11)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KEVIN PHELAN, CANEEL PHELAN, J.P., a minor by and through his guardian ad litem KEVIN PHELAN

DEFENDANTS

BRENTWOOD UNION SCHOOL DISTRICT, DINA HOLDER, LAURI JAMES and DOES 1-30,

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

TODD BOLEY, ESQ.  
1212 Broadway, 16th Floor  
Oakland, CA 94612

PETER W. ALFERT, ESQ.  
1646 No. California Blvd., #600  
Walnut Creek, CA 94596

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship in various states and foreign countries.

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

Large grid table for nature of suit with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983

Brief description of cause: Violation of Fourth Amendment by public school teacher

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (CIVIL R. 3-2)

(Place an "X" in One Box Only)

- SAN FRANCISCO/OAKLAND
SAN JOSE
EUREKA

DATE January 30, 2012

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature: Munk Balle