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JOY GRAYSEN FAIRMAN AND SKY FAIRMAN, THROUGH HER  
GUARDIAN AD LITEM

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

BC474478

CASE NO.

COMPLAINT FOR DAMAGES

MICHAEL FAIRMAN, JOY GRAYSEN  
FAIRMAN AND SKY FAIRMAN, THROUGH  
HER GUARDIAN AD LITEM,

Plaintiffs,

vs.

THORBURN CHIROPRACTIC AND WELLNESS  
CENTER; CHARLENE THORBURN D.C. AND  
DOES 1 THROUGH 20, INCLUSIVE,

Defendants.

1. DISCRIMINATION IN VIOLATION  
OF CIVIL CODE §§ 51, 51.5 AND 52;
2. BREACH OF IMPLIED CONTRACT;
3. BREACH OF THE COVENANT OF  
GOOD FAITH AND FAIR  
DEALING;
4. NEGLIGENCE;
5. NEGLIGENT INFLICTION OF  
EMOTIONAL DISTRESS;
6. INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS;
7. TORTIOUS INTERFERENCE WITH  
PROSPECTIVE ADVANTAGE;
8. INVASION OF THE RIGHT OF  
PRIVACY;
9. BREACH OF HEALTH AND  
SAFETY CODE SECTION 123100

The damages alleged are greater than  
\$10,000.

Plaintiffs Michael Fairman, Joy Graysen Fairman and Sky Fairman, through her Guardian ad  
Litem, allege as follows:

1. At all times relevant, Plaintiffs Michael Fairman, Joy Graysen Fairman and Sky  
Fairman, through her Guardian ad Litem, resided in the City of Los Angeles, County of Los Angeles

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1 and were chiropractic patients of Thorburn Chiropractic Center dba Thorburn Chiropractic and  
2 Wellness Center; Charlene Thorburn D.C., and Does 1 through 20, inclusive.

3 2. At all times relevant, Plaintiffs Michael Fairman, Joy Graysen Fairman and Sky  
4 Fairman, through her Guardian ad Litem, are informed and believe that Defendants Thorburn  
5 Chiropractic Center dba Thorburn Chiropractic and Wellness Center; Charlene Thorburn D.C., and  
6 Does 1 through 20, inclusive, and each of them, operated a medical business open to the public  
7 which did business at 1612 West Burbank Avenue, Burbank, California 91506.

8 3. At all times relevant, Plaintiffs Michael Fairman, Joy Graysen Fairman and Sky  
9 Fairman, through her Guardian ad Litem, are informed and believe that Defendants Thorburn  
10 Chiropractic Center dba Thorburn Chiropractic and Wellness Center; Charlene Thorburn D.C. and  
11 Does 1 through 20, inclusive and each of them (hereinafter "Thorburn Chiropractic."), was and is a  
12 business entity doing business and with its principal business headquarters located in the County of  
13 Los Angeles, State of California and is therefore subject to suit for discrimination in the provision of  
14 services under Government Code § 12948 Thorburn Chiropractic. is not an ERISA entity as defined  
15 by the Federal Retirement Income Security Act in 29 U.S.C § 1132 (a) (1).  
16

17 4. At all times relevant, Plaintiffs Michael Fairman, Joy Graysen Fairman and Sky  
18 Fairman, through her Guardian ad Litem, are informed and believe that Defendant Charlene  
19 Thorburn, D.C. (hereinafter "Dr. Thorburn") is, and at all times relevant, was an individual residing  
20 in the County of Los Angeles and employed by Thorburn Chiropractic as a physician specializing in  
21 chiropractic services. Dr. Thorburn is not an ERISA entity as defined by the Federal Retirement  
22 Income Security Act in 29 U.S.C § 1132 (a) (1).  
23

24 5. Plaintiffs are presently ignorant of the true names and capacities of Does 1 through 20  
25 ("the fictitious Defendants"), who are sued under the provisions of Section 474 of the California  
26 Code of Civil Procedure. Plaintiffs are informed and believe and on that ground allege that each  
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1 fictitious Defendant was in some way responsible for, participated in, and/or contributed to the  
2 matters complained of herein and that Plaintiffs' injuries and damages as hereinafter alleged were  
3 proximately caused by their acts.

4 6. Plaintiffs are informed and believe and based thereon allege that at all times herein  
5 mentioned, Defendants and each of them, including Does 1 through 20, were acting as agents,  
6 servants and employees of each other, and were acting in the full course and scope of their  
7 employment, and with the full knowledge and consent of each of the other Defendants.

8 7. Plaintiffs are informed and believe and based thereon allege that Defendants  
9 Thorburn Chiropractic, and each of them, by their actions and inactions, ratified and/or authorized  
10 the conduct of Dr. Thorburn as alleged herein.

11 8. Plaintiffs allege that the Defendants, and each of them, arbitrarily refused and failed  
12 as healthcare providers to carry out their contractual and legal duties to provide medical services to  
13 their patients Michael Fairman, Joy Graysen Fairman and Sky Fairman, because those healthcare  
14 providers illegally wished to discriminate against their patients on the basis of their patients'  
15 religious orientation. The law and public policy of California prohibits this form of discrimination by  
16 businesses in general, and by medical providers and physicians in particular. California Civil Code  
17 sections 51 and 52 (the Unruh Civil Rights Act); California Government Code sections 12926 and  
18 12948; North Coast Woman's Care Medical Group, Inc. vs. Superior Court 44 Cal. 4<sup>th</sup> 1145 (2008);  
19 Stonmen v. Reilly (1951) 37 Cal.2d 713, 234 P.2d 969; Orloff v. Los Angeles Turf Club 36 Cal.2d  
20 734, 227 P.2d 449; Washington v. Blampton (1964) 226 Cal.App.2d 604; In re Cox (1970) 3 Cal.3d  
21 205, 90 Cal.Rptr. 24; Marina Point, Ltd. V. Wolfson (1982) 30 Cal.3d 721, 180 Cal.Rptr. 496; and  
22 Hubert v. Williams (1982) 133 Cal.App.3d Supp. 1, 184 Cal.Rptr. 161.

23 9. As is more fully set forth below, Defendants Thorburn Chiropractic; Charlene  
24 Thorburn D.C, and each of them, breached a contract and violated California's civil rights laws and  
25 their own medical ethics by denying crucial medical services to Plaintiffs Michael Fairman, Joy  
26 Graysen Fairman and Sky Fairman on the impermissible grounds that they belatedly decided to

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1 discriminate against them because of their religious orientation, and for that reason, the  
2 aforementioned medical providers abruptly broke off a course of treatment for Plaintiffs.

3 10. The discrimination by Defendants Thorburn Chiropractic, Charlene Thorburn D.C  
4 and each of them caused Plaintiffs to endure physical and emotional pain, loss of the benefit of a  
5 contractual bargain and much more.

6 11. Dr. Thorburn is an adherent to the doctrines of the Church of Scientology. She has  
7 been known to require staff members of Thorburn Chiropractic to study and practice the doctrines of  
8 the Church of Scientology. Dr. Thorburn has discussed with her patients her adherence to the  
9 doctrines of the Church of Scientology and has spoken about her religious beliefs with Plaintiffs  
10 Michael Fairman and Joy Graysen Fairman.

11 12. Until on or about January, 2011 Plaintiffs Michael Fairman, Joy Graysen Fairman and  
12 Sky Fairman adhered to the same religious doctrines of the Church of Scientology as did Dr.  
13 Thorburn. However, Michael Fairman became concerned about the manner in which the doctrines  
14 of the Church of Scientology were being applied and he sought the advise and counsel of others who  
15 had similar concerns, including, but not limited to Mark Rathbun, (hereinafter "Rathbun").  
16 Rathbun is formerly a prominent member of the Church of Scientology whose criticisms of the  
17 Church had received national press attention including, but not limited to, an article in the New  
18 Yorker Magazine. The Church of Scientology declared Rathbun a "suppressive person" and under its  
19 doctrine of "disconnection," it directed members of the Church of Scientology to refuse to  
20 communicate with him.

21 13. Michael Fairman is formerly a prominent member of the Church of Scientology and  
22 has, in a variety of mediums, been a spokesperson for the Church of Scientology. His disapproval of  
23 the application of the Church of Scientology doctrines by the current leaders of the Church of  
24 Scientology led to the declaration by the Church of Scientology that he was, like Rathbun, a  
25 suppressive person, and by association, that Joy Graysen Fairman was a suppressive person. This  
26 declaration was in spite of the affirmation by Michel Fairman that he, Joy Graysen Fairman and Sky  
27 Fairman continue to use many of the teachings of the founder of the Church of Scientology, L. Ron  
28 Hubbard, to guide and enhance their lives.

14. Upon the resignation from the Church of Scientology and the declaration by the  
Church of Scientology that Michael Fairman and Joy Graysen Fairman were suppressive persons,  
family, friends and business associates who are Scientologists disconnected from them.

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1           15.     On or about October 1, 2011 Thorburn Chiropractic and Dr. Thorburn sent Michael  
2 Fairman and Joy Graysen Fairman a letter which stated:

3                     "I will no longer be your treating Chiropractor effective  
4                     10 days from the date of this letter."

5           16.     No appointment date had been requested by Plaintiffs which might have prompted  
6 Defendants' communication to the Plaintiffs. However, on or about July 20, 2011, Dr Lisa Benest,  
7 M.D. Inc. and Lisa Benest, M.D. ("Benest"), a member of the Church of Scientology, terminated  
8 Michael Fairman and Joy Graysen Fairman as her patients. Plaintiffs are informed and believe that  
9 Benest advised Dr. Thorburn that she terminated the Plaintiffs as her patients on account of the  
10 resignation by Michael Fairman and Joy Graysen Fairman from the Church of Scientology. Plaintiffs  
11 are informed and believe that other members of the Church of Scientology also made similar  
12 statements to Dr. Thorburn

13           17.     Since on or about July 16, 2003 Michael Fairman was a patient of Thorburn  
14 Chiropractic and Dr. Thorburn and had been regularly and continuously treated by the physicians  
15 and staff of Thorburn Chiropractic before termination by Dr. Thorburn and Thorburn Chiropractic  
16 on or about October 1, 2011. However, Michael Fairman had not seen Dr. Thorburn and Thorburn  
17 Chiropractic since September 10, 2008 and there was no imminent medical reason that Dr.  
18 Thorburn would need to write Michael Fairman concerning his status as a patient. Michael  
19 Fairman's treating physician included Dr. Thorburn, and he was provided medical care by staff and  
20 nurses of Thorburn Chiropractic. Michael Fairman has timely paid his bills and has insurance for  
21 the medical treatment provided by Thorburn.

22           18.     On October 5, 2011 and October 11, 2011, Joy Graysen Fairman called Thorburn  
23 Chiropractic and sought from the staff and Dr. Thorburn an explanation for the abrupt termination of  
24 medical services. On October 5, 2011 Joy Graysen Fairman asked why the October 1, 2011 letter  
25 was sent. She was told by Jobee, an employee of Thorburn, that she did not know why Dr. Thorburn  
26 "terminated" Michael Fairman and Joy Graysen as patients or whether Sky Fairman was also  
27 terminated. Jobee said that she would ask Dr. Thorburn to call back. On October 11, 2011 Joy  
28 Graysen Fairman left a message on the answering machine of Thorburn Chiropractic requesting that  
Dr. Thorburn personally return the phone call. Thorburn Chiropractic and Dr. Thorburn did not  
return the phone messages nor provide an explanation for the termination.

          19.     On October 6, 2011 Michael Fairman called Thorburn Chiropractic and spoke with  
Jobee. He asked why the October 1, 2011 letter was sent. Jobee said she would have Dr. Thorburn

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1 return the call. Thorburn Chiropractic and Dr. Thorburn did not return the phone message nor  
2 provide an explanation for the termination.

3 20. Since on or about June 24, 2003 Joy Graysen Fairman was a patient of Thorburn  
4 Chiropractic and Dr. Thorburn and she has been regularly and continuously treated by the physicians  
5 and staff of Thorburn Chiropractic since that time, with the last medical appointment before  
6 termination by Thorburn Chiropractic or about September 16, 2011. Plaintiff is informed and  
7 believes that it was the Joy Graysen Fairman appointment of September 16, 2011 which was the  
8 immediate impetus for consideration of disassociation and termination of treatment by Thorburn  
9 Chiropractic and Dr. Thorburn. Further, Plaintiffs are informed and believe that the termination of  
10 the Plaintiffs, and each of them, as patients was to conform with the directions, practices or advise of  
11 Dr. Benest and other members of the Church of Scientology. The treating physicians included Dr.  
12 Thorburn and she was provided medical care by staff and nurses of Thorburn Chiropractic. Joy  
13 Graysen Fairman has timely paid her bills and has insurance for the medical treatment provided by  
14 Thorburn Chiropractic.

15 21. Joy Graysen Fairman obtained chiropractic adjustments relief for monthly migraine  
16 headaches which were diagnosed as hormonal in origin and related to her menstrual cycle. Dr.  
17 Thorburn was the only chiropractor who had been able to address the pain which, without treatment,  
18 lasts for four or more days, but with adjustments by Dr. Thorburn, were typically half of that  
19 duration. This medical need and condition and the fact that treatment by Dr. Thorburn was unique  
20 and likely not available elsewhere, was referenced in the October 11, 2011 message and had  
21 frequently been discussed with Dr. Thorburn by Joy Graysen Fairman.

22 22. Since on or about March 10, 2008 Sky Fairman was a patient of Thorburn  
23 Chiropractic and she has been regularly and continuously treated by the physicians of Thorburn  
24 Chiropractic since that time, with the last medical appointment before termination by Thorburn  
25 Chiropractic on or about November 14, 2009. Her treating physician was Dr. Thorburn and she was  
26 provided medical care by staff and nurses of Thorburn Chiropractic. Sky Fairman's bills were timely  
27 paid and she has insurance for the medical treatment provided by Benest Corp.

28 23. On October 29, 2011 Plaintiffs wrote Dr. Thorburn a letter seeking  
their medical records. The letter stated:

"I am requesting that you send, or have available for  
pick-up, the complete medical records of myself,  
Michael Fairman, Joy Fairman and Sky Fairman."

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1 The letter was sent via certified mail and signed for by "Jobee Knight" who Plaintiffs are informed  
2 and believe is the same person who received Plaintiffs' telephone calls on October 5, 2011 and  
3 October 6, 2011 referenced above. No response was ever received to the October 29, 2011 Certified  
4 Mail letter. The refusal to release the medical records upon Plaintiffs' termination by Defendants,  
5 and each of them, is in violation of California Health and Safety Code Section 123100(a) in that the  
6 records were not provided in five (5) days from the demand as required by the aforementioned Code  
7 section.

8 24. Plaintiffs are informed and believe that the termination of Plaintiffs by Dr. Thorburn  
9 and Thorburn Chiropractic as medical patients was because of the resignation from the Church of  
10 Scientology by Michael Fairman and Joy Graysen Fairman, the declaration of Michael Fairman and  
11 Joy Graysen Fairman as suppressive persons and the application to the Plaintiffs by Dr. Thorburn  
12 and Thorburn Chiropractic of the disassociation doctrine of the Church of Scientology. Plaintiffs are  
13 informed and believe that the Church of Scientology, or some of its members, including but not  
14 limited to Dr. Thorburn, were told by Dr. Benest and Benest Corp. that Michel Fairman and Joy  
15 Graysen Fairman were their patients.

16 25. On or about October 26, 2011 Dr. Thorburn and Thorburn Chiropractic were served  
17 with a Code of Civil Procedure § 364 Notice of Medical Malpractice claim.

18 26. As a consequence of the Defendants' discrimination, Plaintiffs have been injured  
19 physically and emotionally and have suffered contract damages for which they should be  
20 compensated. Plaintiffs suffered violations of their civil rights for which California law provides  
21 compensation, in actual damages, statutory damages and punitive damages against the perpetrators.  
22 Plaintiffs seek punitive damages against Defendants as a disincentive to future such misconduct by  
23 Defendants and others similarly situated. Plaintiffs seek an order that their medical records be  
24 provided and for damages, as provided for by law, for the refusal to release to Plaintiffs their  
25 medical records.

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1 **FIRST CAUSE OF ACTION**

2 **Violation of California s Unruh Civil Rights Act, Civil Code sections 51, 51.5 and 52**

3 **Discrimination In The Provision of Medical Services-**

4 **Against Defendants Thorburn Chiropractic Dr. Thorburn and Does 1 to 5**

5 27. Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1  
6 through 25 above as though fully set forth herein.

7 28. This cause of action arises out of the provisions of the Unruh Civil Rights Act,  
8 California Civil Code section 51, 51.5 and 52 and Government Code section 12948.

9 29. At all times herein mentioned, Defendants, Dr. Thorburn and Does 1-5 were the  
10 agents of Thorburn Chiropractic. and in doing the things herein alleged, were acting within the  
11 course and scope of such agency and with the permission and consent of their co-Defendants.

12 30. Each of the Defendants, other than Dr. Thorburn, is a business establishment within  
13 the meaning of the Unruh Civil Rights Act. At all times herein mentioned, Defendants Dr. Thorburn  
14 and Does 1 through 5, were owners and operators of business establishments that provide healthcare  
15 to the public, in the County of Los Angeles, California.

16 31. On or about the following dates: June 24, 2003, July 16, 2003 and March 10, 2008,  
17 the Plaintiffs Michael Fairman, Joy Graysen Fairman and Michael Fairman on behalf of Sky  
18 Fairman, entered into the commercial relationship of patient and medical provider with Defendants,  
19 and each of them. The sole and only purpose of the commercial transaction with Defendants and  
20 each of them was to treat Plaintiffs' chiropractic needs. On October 1, 2011 Defendants and each of  
21 them abruptly discontinued the services at physically and physiologically crucial moments. During  
22 the time that Plaintiffs were engaged in their commercial relationships with Defendants and each of  
23 them, Plaintiffs are informed and believe that Defendants and each of them provided chiropractic  
24 services for other patients who had contracted for the services before and after Plaintiffs contracted  
25 for the services.

26 32. Plaintiffs are former members of the Church of Scientology which has declared that  
27 Michael Fairman and Joy Graysen Fairman are suppressive persons.

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1           33. Defendants and each of them have unlawfully discriminated against Plaintiffs by  
2 denying them commercially available services or public accommodations, on the basis of a bias that  
3 is impermissible for business establishments. Defendants Thorburn Chiropractic and Dr. Thorburn  
4 unambiguously discriminated against Plaintiffs for the express reason that Plaintiffs are members of  
5 a class of persons who practice their religion, including Scientology, but not Scientology as applied  
6 by the Church of Scientology—and for that reason they are protected by the Unruh Civil Rights Act.  
7 Therefore, Plaintiffs are informed and believe and thereon allege, that Defendants, and each of them,  
8 denied to Plaintiffs the services, advantages, accommodations, facilities and privileges provided to  
9 other persons, as alleged above, on account of Plaintiffs' religious orientation.

10           34. Plaintiffs are informed and believe and thereon allege that Defendants' wrongful  
11 conduct is continuing, in that Defendants, and each of them, continue to deny Plaintiffs, and persons  
12 of Plaintiffs' religious orientation, the full and equal accommodations, advantages, facilities,  
13 privileges and services of the above-mentioned business establishments.

14           35. As a proximate result of the above-described wrongful conduct of Defendants, and  
15 each of them, Plaintiffs have suffered physical pain, humiliation, embarrassment, mental anguish,  
16 indignity, shock, emotional and physical distress, and has been injured in mind and body all to  
17 Plaintiffs' damage in an amount of actual damages to be proven in Court.

18           36. As a further proximate result of the above-described wrongful conduct of Defendants  
19 and each of them, Plaintiffs will be required to employ physicians and other professionals to  
20 examine, treat, and care for their emotional distress injuries, and Plaintiffs will incur medical  
21 expenses and other incidental expenses in an amount of actual damages which has not yet been  
22 determined.

23           35. Plaintiffs lost the benefit of the bargain they struck with Defendants, and each of  
24 them, for all services up to her abandonment by Thorburn Chiropractic and Dr. Thorburn, on or  
25 about October 1, 2011, in an amount to be proven in Court.

26           36. Thus, as a proximate result of the wrongful acts of Defendants and each of them,  
27 Plaintiffs sustained actual damages in an amount to be proven in Court.

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1 37. As a proximate result of the wrongful acts of Defendants and each of them, Plaintiffs  
2 additionally are entitled to recover statutory damages of three times all actual damages, punitive  
3 damages and attorneys' fees as provided in Civil Code section 52 and Government Code Section  
4 12965.

5 38. The acts of Defendants Thorburn Chiropractic, Dr. Thorburn, and each of them, were  
6 willful, wanton, and oppressive. The employees, managers, officers or owners of Thorburn  
7 Chiropractic acted with oppression and malice, and had advance knowledge of the discriminatory  
8 conduct of Dr. Thorburn and Defendants and each of them and ratified the wrongful conduct herein  
9 alleged.

## 10 SECOND CAUSE OF ACTION

### 11 **Breach of Implied Contract Against Defendants**

#### 12 **Thorburn Chiropractic., Dr. Thorburn and Does 1 through 5**

13 39. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1  
14 through 38 above as though fully set forth herein.

15 40. Within the State of California there exists a substantial and fundamental law and  
16 public policy, codified in Civil Code section 51 et seq. (the Unruh Civil Rights Act) and California  
17 Government Code sections 12948, which forbids discrimination by businesses and providers of  
18 services and public accommodations on the basis of religious orientation. This public policy benefits  
19 the public at large and guarantees the rights of all persons to pursue the enjoyment of life and to  
20 enjoy the benefits of legal contracts without the impediment of arbitrary discrimination based upon  
21 their identity as a member of a particular group.

22 41. Plaintiffs are the intended beneficiary of implied contracts for continuing chiropractic  
23 treatment for which they gave agreed-upon consideration to Defendants and each of them as alleged  
24 above. These implied contracts were breached unilaterally by Defendants and each of them, as  
25 described above.

26 42. Specifically, Plaintiffs should have been able to rely on the implied contracts with  
27 Defendants, and each of them, to carry through with promises to complete their course of

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1 chiropractic treatment. To their detriment, Plaintiffs relied on the implied promises by foregoing  
2 chiropractic treatment by other potential providers and by enduring physical pain and fiscal expense.  
3 Then Defendants and each of them refused to carry out those implied promises, causing Plaintiffs to  
4 lose an irreplaceable patient-physician relationship.

5 43. As set forth above, Defendants Thorburn Chiropractic, Dr. Thorburn, Does 1 through  
6 5 and each of them denied services for which Plaintiffs were willing and able to pay and they had  
7 invested their physical pain, time and energies on the basis of the continuing patient-physician  
8 relationships which were terminated because of the impermissible discrimination by the providers of  
9 those services.

10 44. The above-described actions by Defendants, and each of them, caused Plaintiffs to  
11 lose irreplaceable opportunities to maintain their patient-physician relationship. The statements and  
12 actions of Defendants, and each of them, caused Plaintiffs to lose these fundamental rights in  
13 violation of public policy. Defendants, and each of them, knew of the intolerable actions and  
14 conditions and of their impact on Plaintiffs and failed and/or refused to correct and/or remedy the  
15 situation.

16 45. As a proximate result of the discrimination and intimidation against Plaintiffs,  
17 Defendants and each of them violated Plaintiffs' civil rights to full equal treatment with regard to  
18 commercial services and advantages, and have breached an implied contract for which Defendants  
19 and each of them accepted all consideration from Plaintiffs.

20 46. As a result of Defendants' actions, Plaintiffs suffered the injuries and damages  
21 alleged above.

22 47. In doing the acts herein alleged, Plaintiffs are entitled to contract damages from the  
23 Defendants and each of them.

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1                                    **THIRD CAUSE OF ACTION**

2                                    **Breach of the Covenant of Good Faith and Fair Dealing**  
3                                    **Against Defendants Thorburn Chiropractic, Dr. Thorburn**  
4                                    **and Does 1 through 5**

5                    48.      Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1  
6 through 47 above as though fully set forth herein.

7                    49.      The medical-service implied contracts referred to above contain implied covenants of  
8 good faith and fair dealing which obligated Defendants and each of them to perform the terms and  
9 conditions of the contract fairly and in good faith and to refrain from doing any act that would  
10 prevent or impede Plaintiffs or deprive Plaintiffs of the benefits of their contracts.

11                   50.      Defendants and each of them breached the implied covenant of good faith and fair  
12 dealing under the contracts by subjecting Plaintiffs to the unlawful discrimination described herein.

13                   51.      As a proximate result of Defendants' actions, Plaintiffs suffered the injuries and  
14 damages alleged above.

15                                    **FOURTH CAUSE OF ACTION**

16                                    **Negligence Against Defendants**

17                                    **Thorburn Chiropractic. Dr. Thorburn and Does 1 through 5**

18                   52.      Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1  
19 through 51 above as though fully set forth herein.

20                   53.      Defendants Thorburn Chiropractic Dr. Thorburn, Does 1 to 5 and each of them were  
21 negligent in their failure to exercise due care in the performance of duties and failure to comply with  
22 the affirmative duties of a medical provider as set forth in Government Code Sections 12948,  
23 including, but not limited to, taking all reasonable steps to prevent unlawful discrimination in the  
24 provision of chiropractic services from occurring by not taking immediate, appropriate, and  
25 corrective action upon receiving a complaint of such discrimination, causing Plaintiffs severe  
26 emotional distress.

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54. Under Defendants' medical relationship with Plaintiffs, Defendants and each of them had a duty to provide medical care to Plaintiffs in accordance with the anti-discrimination, medical licensing and other laws of the State of California and the United States.

55. Thorburn Chiropractic, Dr. Thorburn, Does 1 through 5 and each of them negligently breached that duty by engaging in conduct that caused physical, emotional and pecuniary injuries and damages to Plaintiffs.

56. As a proximate result of Defendants' actions, Plaintiffs suffered the injuries and damages alleged above.

### FIFTH CAUSE OF ACTION

## Negligent Infliction of Emotional Distress Against Defendants

**Thorburn Chiropractic. Dr. Thorburn and Does 1 through 5**

57. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 82 above as though fully set forth herein.

58. Defendants Thorburn Chiropractic, Dr. Thorburn, Does 1 through 5 and each of them were negligent and failed to exercise due care in the performance of duties and failure to comply with the affirmative duties of a medical provider as set forth in Government Code Sections 12948, including, but not limited to, taking all reasonable steps to prevent unlawful discrimination in the provision of chiropractic services from occurring by not taking immediate, appropriate, and corrective action upon receiving a complaint of such discrimination, causing Plaintiffs severe emotional distress.

59. As a proximate result of Defendants' acts and omissions as set forth herein, Plaintiffs suffered severe emotional distress and mental suffering resulting in the injuries and damages alleged above.

### SIXTH CAUSE OF ACTION

### **Intentional Infliction of Emotional Distress**

**Against Defendants Thorburn Chiropractic, Dr. Thorburn and Does 1 through 5**

60. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 59 above as though fully set forth herein.

1           61.    The above-described discriminatory and wrongful acts of Defendants and each of  
2 them were outrageous and unprivileged.

3           62.    The conduct by Defendants Thorburn Chiropractic, Dr. Thorburn, Does 1 through 5  
4 and each of them were intentional, malicious and done for the purpose of causing Plaintiffs to suffer  
5 humiliation, mental anguish and emotional and physical distress.

6           63.    Defendant Thorburn Chiropractic's conduct in confirming, permitting and/or ratifying  
7 that conduct was done with the knowledge that Plaintiffs' emotional and physical distress would  
8 thereby increase and was done with a wanton and reckless disregard of the consequences to  
9 Plaintiffs.

10          64.    As a proximate result of the above-described wrongful conduct of Defendants and  
11 each of them, Plaintiffs suffered the injuries and damages alleged above.

12          65.    In doing the acts herein alleged, Defendants and each of them acted with malice and  
13 oppression, and with a conscious disregard of Plaintiffs' rights, and Plaintiffs are entitled to  
14 exemplary and punitive damages from Defendants and each of them in an amount sufficient to  
15 punish Defendants and each of them and to deter such wrongful conduct in the future.

#### 16                                   **SEVENTH CAUSE OF ACTION**

#### 17                                   **Tortious Interference with Prospective Advantage**

#### 18                                   **Against Thorburn Chiropractic, Dr. Thorburn and Does 1 through 5**

19          66. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 65  
20 above as though fully set forth herein.

21          67. Plaintiffs are informed and believe that Thorburn Chiropractic, Dr. Thorburn and Does 1  
22 through 5 disclosed their termination of the Plaintiffs with other physicians for the purpose of  
23 inducing other physicians to terminate their patient-physician relations with Plaintiffs.

24          68. Plaintiffs are informed and believe that Thorburn Chiropractic., Dr. Thorburn and Does 1  
25 through 5 disclosed their termination of the Plaintiffs with the Church of Scientology and others  
26 associated with the Church of Scientology, in violation of the Health Insurance Portability and  
27 Accountability Act of 1996 ("HIPAA") Pub. L. No. 104-191, 110 Stat. 1936 (1996) (codified

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1 primarily in Titles 18, 26 and 42 of the United States Code. Plaintiffs do not allege that the violation  
2 of HIPAA gives rise to a cause of action, but allege that the violation of HIPAA tortiously interfered  
3 with their Prospective Advantage with others.

4 69. As a proximate result of Defendants' actions, Plaintiffs suffered the injuries and damages  
5 alleged above.

#### 6 **EIGHTH CAUSE OF ACTION**

##### 7 **Invasion of Right of Privacy Plaintiffs**

##### 8 **Against Defendants Thorburn Chiropractic, Dr. Thorburn and Does 1 through 5**

9 70. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1  
10 through 69 above as though fully set forth herein.

11 71. The acts of discrimination and other tortious acts as described herein, performed by  
12 Thorburn Chiropractic, Dr. Thorburn and Does 1 through 5 invaded Plaintiffs' right to privacy  
13 protected by common law principles and by the California Constitution, Article 1, Section 1, in that  
14 such acts constituted prying or intrusion into Plaintiffs' affairs which are private and are entitled to  
15 be private in a manner that was offensive and objectionable to Plaintiffs and which would be  
16 offensive or objectionable to the reasonable person.

17 72. As a proximate result of the above-described wrongful conduct of Defendants and  
18 each of them, Plaintiffs suffered the injuries and damages alleged above.

#### 19 **NINTH CAUSE OF ACTION**

##### 20 **VIOLATION OF HEALTH AND SAFELY CODE SECTION 123120**

##### 21 **Against Defendants Thorburn Chiropractic, Dr. Thorburn and Does 1 through 5**

22 73. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1  
23 through 72 above as though fully set forth herein.

24 74. As alleged in Paragraph 23 of this Complaint, on October 29, 2011 Plaintiffs sent a letter  
25 to Dr. Thorburn and Thorburn Chiropractic.

26 75. Plaintiffs October 29, 2011 letter to Dr. Thorburn constituted a demand for medical  
27 Records to be sent to the patient.

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1 76. California Health and Safety Code Section 123120 provides as follows:

2 Any patient or representative aggrieved by a violation of  
3 Section 123110 may, in addition to any other remedy provided by law,  
4 bring an action against the health care provider to enforce the  
5 obligations prescribed by Section 123110. Any judgment rendered in  
6 the action may, in the discretion of the court, include an award of  
7 costs and reasonable attorney fees to the prevailing party.

7 77. Plaintiffs will pay the reasonable cost for of duplication of their records.

8 78. As Plaintiffs request for medical records was not responded to within fifteen (15) days of  
9 October 29, 2011 or at any other time, and as there is no other adequate remedy at law, Plaintiffs  
10 seek an injunctive order of the court for release of their medical records.

11 PRAYER

12 WHEREFORE, Plaintiffs pray judgment against Defendants, as follows:

- 13 1. For general damages according to proof;  
14 2. For actual damages according to proof;  
15 3. For treble damages, as provided under Civil Code section 52;  
16 4. For medical and related expenses for-distress in a sum according to proof;  
17 5. For other damages, according to proof;  
18 6. For loss of earnings, past and future;  
19 7. For punitive damages as allowed by law;  
20 8. For attorneys' fees, as provided under Civil Code section 52;  
21 9. For an injunctive order that Defendants to release to Plaintiffs their medical records;  
22 10. For costs of suit and attorneys fees as provide for under Health and Safely Code  
23 Section 123120;

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1 11. For costs of suit; and

2 12. For such other and further relief as the court may deem proper.

3  
4 Dated: December 1, 2011

KANE BALLMER & BERKMAN

5  
6 By: 

Bruce Gridley Attorneys for Michael Fairman, Joy  
Fairman and Sky Fairman through her Guardian ad  
Litem