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FILED

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STEPHEN L. WASH
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA

K. VAQUERANO

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA,
8 CONTRA COSTA COUNTY, WAKEFIELD TAYLOR COURTHOUSE

9 SHALAN HOOKS and MYISHA KEE,
10 Plaintiffs,
11 vs.
12 DAVID C. ATKINSON; DAVID C.
13 ATKINSON, D.C., A PROFESSIONAL
CHIROPRACTIC CORPORATION;
14 DIABLO VIEW ACCIDENT &
INJURY; and DOES 1 to 25, inclusive.
15 Defendants.
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Case No. C-18-01149
(Unlimited Civil Case)

COMPLAINT FOR DAMAGES AND DEMAND
FOR JURY TRIAL

SUMMONS ISSUED

1. Professional Negligence of Chiropractor
2. Intentional Infliction of Emotional Distress
3. Battery
4. Sexual Battery (Civ. Code § 1708.5)
5. Breach of Fiduciary Duty
6. Sexual Harassment (Civ. Code §51.9)
7. Negligent Hiring and Retention

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT 12, FOR ALL
PURPOSES.

18 Plaintiffs SHALAN HOOKS, and MYISHA KEE (sometimes collectively "Plaintiffs"),
19 for their complaint against defendants DAVID C. ATKINSON, DAVID C. ATKINSON, D.C.,
20 A PROFESSIONAL CHIROPRACTIC CORPORATION, DIABLO VIEW ACCIDENT &
21 INJURY, and DOES 1 to 25, inclusive (sometimes collectively "Defendants") allege as follows:

22 JURISDICTION

23 1. This Court has jurisdiction and venue because one or more defendants are
24 domiciled in Pleasant Hill, California, in Contra Costa County.

25 PARTIES

26 2. Plaintiff SHALAN HOOKS ("Hooks" and "Plaintiff Hooks") is an adult female
27 who is domiciled in Contra Costa County, California.
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1 3. Plaintiff MYISHA KEE (“Kee” and “Plaintiff Kee”) is an adult female who is
2 domiciled in Contra Costa County, California.

3 4. Defendant DAVID C. ATKINSON (“ATKINSON”) is an adult male. Plaintiffs
4 are informed and believe, and thereon allege, that ATKINSON is domiciled in Contra Costa
5 County, California. On further information and belief, Plaintiffs allege that ATKINSON is, and
6 at all times herein mentioned was, a Doctor of Chiropractic, licensed by the State of California to
7 practice chiropractic in the State of California. On further information and belief, ATKINSON
8 was, at all times herein mentioned, practicing chiropractic in Pleasant Hill, California, in Contra
9 Costa County. At all times relevant herein, ATKINSON held himself out to possess that degree
10 of skill, knowledge, and expertise as other licensed chiropractors in the community.

11 5. Plaintiffs are informed and believe, and thereon allege, that defendant DAVID C.
12 ATKINSON, D.C., A PROFESSIONAL CHIROPRACTIC CORPORATION (“ATKINSON
13 APC”), is, and at all times herein mentioned was, a corporation organized and existing under the
14 laws of the State of California, with its principal place of business at 670 Gregory Lane, Suite C,
15 in Pleasant Hill, California, in Contra Costa County. On further information and belief,
16 ATKINSON was, at all times herein mentioned, an officer, director, and managing agent of
17 ATKINSON APC.

18 6. Plaintiffs are informed and believe, and thereon allege, that defendant DIABLO
19 VIEW ACCIDENT & INJURY (“DIABLO VIEW”) is a business entity of unknown form, with
20 its principal place of business at 670 Gregory Lane, Suite C, in Pleasant Hill, California, in
21 Contra Costa County. In the alternative, and on information and belief, “Diablo View Accident
22 & Injury” is one name under which ATKINSON and ATKINSON APC conduct their
23 chiropractic business in Pleasant Hill, California, in Contra Costa County.

24 7. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
25 DOES 1 to 25, inclusive, and therefore sues said Defendants by such fictitious names. Plaintiff
26 is informed and believes, and thereon alleges, that DOES 1 to 25 are in some manner responsible
27 for the injuries and damages complained of herein. Plaintiffs will amend this Complaint to
28 allege the true names and capacities of such defendants when they are ascertained.

1 13. Each of Defendants' acts herein alleged represents a distinct and separate
2 occurrence which caused Plaintiff unique injuries and damages from each and every other act.

3 14. Commencing with the first treatment and continuing thereafter until the
4 relationship of chiropractor and patient was terminated, Defendants, and each of them, so
5 negligently and carelessly examined, assessed, diagnosed, treated, cared for, and treated
6 Plaintiffs so as to proximately cause Plaintiffs' physical and mental condition to worsen. Such
7 negligent and careless treatment included, but was not limited to, the following:

- 8 A. The failure to treat Plaintiff at all times in an appropriate physical setting
9 designed to promote and facilitate the goals of the chiropractic service.
- 10 B. The failure to create and implement clinical practice guidelines or
11 protocols for reporting patients' condition to their primary care and/or
12 referring physician.
- 13 C. The failure to collaborate and communicate with, and report Plaintiffs'
14 condition to all other necessary disciplines and health care providers.
- 15 D. The failure to communicate with Plaintiffs using proper therapeutic
16 communication and listening skills to elicit information necessary to
17 properly treat Plaintiffs.
- 18 E. The failure to maintain with Plaintiffs an ongoing collaborative process of
19 decision making throughout the provision of services.
- 20 F. The failure to create and implement appropriate clinical practice
21 guidelines or protocols related to establishing a chiropractic diagnosis,
22 plan of care, and treatment(s)/intervention(s).
- 23 G. The negligent performance of an initial examination and evaluation to
24 establish a diagnosis and prognosis prior to intervention.
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H. The failure to establish and follow a plan of care based on Plaintiffs' presenting problems and which, instead, was based on Defendants' pursuit of their own agenda.

I. The failure to communicate, coordinate, and document all aspects of Plaintiffs' treatment, including the initial examination and evaluation, diagnosis, prognosis, plan of care, interventions, responses to interventions, changes in status, reexamination, and other patient management activities.

J. The failure of Defendants ATKINSON APC, DIABLO VIEW, and DOES 1 to 25 to properly supervise Defendant ATKINSON during his treatment of Plaintiffs.

K. The failure to properly treat Plaintiffs' medical conditions and other symptomology, by among other things, negligently giving Plaintiffs advice regarding their condition without performing a proper examination; improperly massaging, manipulating, and adjusting Plaintiffs and/or omitting to provide necessary massages, manipulations, and adjustments; and failing to apply modalities and/or applying them in a way that fell below the standard of care.

L. The failure to prepare and provide Plaintiffs with written patient education materials, including diagrams and directions, and to ascertain Plaintiffs' understanding.

M. The failure to maintain Plaintiffs' health information record in a manner that reflects a comprehensive picture of Plaintiffs, the clinical thought processes involved in the assessment and findings, and the development of the care/treatment/intervention plan and prognosis.

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- N. The failure to provide a detailed explanation of each treatment/intervention that required ATKINSON to touch Plaintiffs and ask Plaintiffs to repeat the description.
- O. The failure to obtain and document Plaintiffs' consent or refusal to proceed with all proposed treatment(s)/intervention(s).
- P. The failure to maintain Plaintiffs' dignity by ensuring that their body was appropriately covered whenever possible, exposing only the part(s) being treated.
- Q. The failure to have a second staff member observe ATKINSON's behavior during those treatment(s)/intervention(s) in which therapeutic touching could be misinterpreted as intimate touching.
- R. The failure to cease treatment/intervention after Plaintiffs expressed emotional discomfort with ATKINSON's treatment.
- S. The failure to recommend a qualified neutral chiropractor to continue chiropractic treatments on Plaintiffs once ATKINSON lost objectivity in his treatment of Plaintiffs.
- T. The failure to reassure Plaintiffs by giving them the opportunity to ask additional questions regarding treatment, making a complaint, and requesting another therapist.
- U. The failure of ATKINSON APC, DIABLO VIEW, and DOES 1 to 25 to prohibit ATKINSON from engaging in inappropriate or questionable personal contact and conversations with Plaintiffs.
- V. The failure to inform Plaintiffs at any time of any prior allegations of inappropriate conduct made against ATKINSON by former patients.
- W. The clouding and breaking down of boundaries.

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X. The abuse of the transference phenomenon.

Y. The overpersonalization of the treatment relationship.

Z. Insisting, over Plaintiffs' objections and until they relented, that Plaintiffs unnecessarily disrobe in part and wear very short shorts during treatments.

15. All of the above allegations, which are not meant to be exhaustive, but rather only examples of Defendants' inappropriate conduct, constitute actions and omissions below the standard of care in the community and exist wholly and separately from the sexually inappropriate acts alleged in other parts of this Complaint. Many of the allegations in paragraph 14 occurred before there was any alleged sexual misconduct in Defendants' relationship to Plaintiffs. If ATKINSON never acted sexually towards Plaintiffs and never performed the intentional misconduct hereinafter alleged, he would still have violated the standard of care in his treatment of Plaintiffs, as alleged above. None of the allegations in paragraph 14 arose from or in any way were incidental to the sexual contact, sexual battery, or sexual harassment.

16. As a proximate result of the conduct of Defendants, and each of them, as alleged above, Plaintiffs have incurred, and will incur in the future, medical and other related out-of-pocket expenses in a sum unknown at this time. At the time of trial, Plaintiffs will seek damages for medical bills, past and future, and other related past and future expenses according to proof.

17. As a proximate result of the conduct of Defendants, and each of them, as alleged above, Plaintiffs have sustained and will sustain in the future, lost wages and loss of earning capacity in a sum unknown at this time. At the time of trial, Plaintiffs will seek damages for past and future lost wages and loss of earning capacity according to proof.

18. As a proximate result of the conduct of Defendants, and each of them, as alleged above, Plaintiffs' physical and mental condition worsened, causing them severe emotional distress, physical injury, and permanent mental injury.

19. As a proximate result of the conduct of Defendants, and each of them, as alleged above, Plaintiffs have sustained, and will, in the future, continue to suffer physical, mental and

1 emotional pain, suffering, and distress, all to her general damage in a sum to be proven at the
2 time of trial.

3 WHEREFORE, Plaintiffs pray for judgment as set forth below.

4 **SECOND CAUSE OF ACTION**

5 (Against All Defendants for Intentional Infliction of Emotional Distress)

6 20. Plaintiffs reallege and incorporates by reference the allegations set forth in the
7 other paragraphs of this Complaint, except for those allegations that are inconsistent with a cause
8 of action for intentional infliction of emotional distress.

9 21. Starting in about March of 2017, Defendant ATKINSON used his ability,
10 knowledge, and background as a chiropractor to physically and sexually abuse Plaintiff Kee,
11 knowing that Plaintiff Kee was in such a vulnerable position as being a patient and in need of
12 therapeutic care, and believing that she needed Atkinson's cooperation to help her with a legal
13 injury case for which Atkinson was treating her, both of which made her extremely susceptible to
14 physical and sexual abuse. On some visits, Defendant ATKINSON insisted that Plaintiff Kee
15 wear very short shorts without any underwear on underneath. On one such occasion, he put
16 some cream on his hands and then remarked, "If I get fresh, just slap me," or words to that effect.
17 Thereafter he began to massage Plaintiff Kee's legs. During the massage treatment, Plaintiff
18 noticed that Defendant ATKINSON appeared to be attempting to peek at Plaintiff Kee's
19 "privates" as he massaged her in an overly sensuous way, with his hands gradually moving up
20 Plaintiff Kee's thighs and toward her privates. Although Defendant ATKINSON did not actually
21 touch Plaintiff Kee's privates on this visit, his hands were close enough, and high enough on
22 Plaintiff Kee's thighs to make her feel extremely uncomfortable. Plaintiff Kee thereafter did not
23 want to admit what had happened, and initially chose to give Defendant ATKINSON the benefit
24 of the doubt by keeping quiet about what had happened. But she stopped treatment for a while.
25 She did return, however, for additional treatment after being injured in an automobile accident in
26 about late August of 2017.

27 22. After Plaintiff Kee returned to Defendant ATKINSON for treatment in August or
28 early September of 2017, the first couple visits seemed normal. But starting on about the third

1 visit, Defendant ATKINSON insisted that Plaintiff Kee take her shirt completely off during
2 treatment. Relying on the hope that Defendant ATKINSON would act in a professional manner,
3 Plaintiff Kee did as she was instructed, but she felt very self-conscious, standing there with just a
4 bra on. She crossed her arms over her chest, causing Defendant ATKINSON to remark,
5 “Myisha, you’re so shy.” He then asked her to take one of her bra straps halfway down halfway
6 before commencing his examination and treatment. Although Plaintiff Kee was very
7 uncomfortable, she did as she was instructed.

8 23. On a subsequent visit, Defendant ATKINSON had Plaintiff Kee remove all of her
9 clothes and wear a gown during her treatment. She felt uncomfortable during this entire
10 treatment.

11 24. On another subsequent visit, Defendant ATKINSON gave Plaintiff Kee a
12 massage while she was sitting in a chair. During the massage, Plaintiff Kee felt Defendant
13 ATKINSON’S hand drop down and graze her breast.

14 25. On Plaintiff Kee’s last visit, which was in October or November of 2017,
15 Defendant ATKINSON instructed Plaintiff Kee to remove her shirt. Plaintiff Kee was again left
16 standing in just a bra. During his “treatment” of Plaintiff Kee, Defendant ATKINSON suddenly
17 and without warning reach into Plaintiff Kee’s bra and freed her breast. Plaintiff Kee was
18 stunned into immobility and froze for several seconds. Defendant ATKINSON continued to cup
19 and fondle Plaintiff Kee’s breast for an indeterminate amount of time, then stopped. Plaintiff
20 Kee left and never returned to treatment.

21 26. Starting in about April or May of 2017, Defendant ATKINSON used his ability,
22 knowledge, and background as a chiropractor to physically and sexually abuse Plaintiff Hooks,
23 knowing that Plaintiff Hooks was in such a vulnerable position as being a patient and in need of
24 therapeutic care and believing that she needed Atkinson’s cooperation to help her with a legal
25 injury case for which Atkinson was treating her, both of, which made her extremely susceptible
26 to physical and sexual abuse. During visits, Defendant ATKINSON referred to Plaintiff Hooks
27 as “Sweetheart,” “Babe,” and “Sugar,” among other things. He inquired about relationships, for
28 example, asking her if she had a boyfriend after overhearing a phone call she was on, then

1 stating, "It sure sounds like you have one," or words to that effect. He gave Plaintiff Hooks
2 massages that she felt were overly sensual and unprofessional, and wherein he let his hands
3 wander over her body, including down between her breasts. He required her to wear very short
4 shorts during treatments, which Plaintiff Hooks felt were not necessary or related to treatment
5 and did not serve any purpose other than to expose her. He asked for hugs after visits in which
6 his chest was pressed up against hers. One at least one occasion, Defendant ATKINSON entered
7 her room post-treatment while she was putting her clothes back on, which Plaintiff Hooks
8 believes was done to catch her in a state of undress. In about June or July of 2017, Defendant
9 ATKINSON remarked, "We're here today by ourselves, so if you scream, nobody will hear
10 you." He then laughed in an odd manner. Thereafter, he commenced treating Plaintiff Hooks,
11 who was feeling very uncomfortable, but proceeded, trying to trust and rely on the hope that
12 Defendant ATKINSON would govern himself in a professional manner. Unfortunately, during
13 this treatment, Defendant ATKINSON, who was standing behind Plaintiff, reached underneath
14 Plaintiff Hooks' bra, freed her breast with both of his hands and began to fondle it. However,
15 Plaintiff quickly stopped him, put her breast back into her bra and terminated the session.

16 27. The despicable conduct of Defendants as alleged above was done with the intent
17 to cause injury to Plaintiffs and was done willfully with a conscious disregard for the rights of
18 Plaintiffs.

19 28. Plaintiffs suffered severe emotional distress as a result of the conduct alleged
20 above and suffered damages as previously set forth in this Complaint.

21 WHEREFORE Plaintiff prays for judgment as set forth below.

22 **THIRD CAUSE OF ACTION**

23 (Against All Defendants for Battery)

24 29. Plaintiffs realleges and incorporate by reference the allegations set forth in the
25 other paragraphs of this Complaint, except for those allegations that are inconsistent with a cause
26 of action for battery.

27 30. During the course of treatment of Plaintiffs, Defendant ATKINSON used his
28 powers and abilities as a chiropractor, and his knowledge and background to engage in sexual

1 contact with and sexual touching of Plaintiffs while knowing that they would be vulnerable to
2 this type of sexual touching.

3 31. Defendant ATKINSON'S sexual touching constituted a harmful or offensive
4 touching and battery upon Plaintiffs' person.

5 32. Plaintiffs did not consent to this sexualized touching and sexual contact.

6 33. Defendant ATKINSON'S conduct in this respect did not arise out of the treatment
7 relationship but, rather, existed wholly and separately from the treatment relationship. The
8 sexual misconduct as described above was not part of treatment.

9 34. Plaintiffs are informed and believe, and thereon allege, that the remaining
10 Defendants, and each of them, ratified Defendant ATKINSON'S actions and failed to act to
11 prevent those actions, despite having knowledge that Defendant ATKINSON was unfit to treat
12 and/or be alone with female patients, and knew, or should have known, that his inappropriate
13 conduct was occurring.

14 35. As a proximate result of the above, Plaintiffs suffered damages as previously set
15 forth in this Complaint.

16 WHEREFORE Plaintiffs pray for judgment as set forth below.

17 **FOURTH CAUSE OF ACTION**

18 (Against All Defendants for Sexual Battery [Civ. Code, § 1708.5])

19 36. Plaintiffs reallege and incorporate by reference the allegations set forth in the
20 other paragraphs of this Complaint, except for those allegations that are inconsistent with a cause
21 of action for sexual battery.

22 37. At all times herein mentioned, Civil Code section 1708.5 was in full force and
23 effect, and prohibited sexual battery, which is defined, in part, therein as acting "with the intent
24 to cause a harmful or offensive contact with an intimate part of another."

25 38. Defendant ATKINSON intentionally and unnecessarily touched Plaintiffs' breast,
26 and thereby engaged in the touching of Plaintiffs' "intimate parts" within the meaning of Civil
27 Code section 1708.5. Said contact was offensive to Plaintiffs and made them feel
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1 uncomfortable, and would also have offended a reasonable person's reasonable sense of personal
2 dignity.

3 39. Defendant ATKINSON'S conduct in this respect did not arise out the treatment
4 relationship but, rather, existed wholly and separately from the treatment relationship. The
5 sexual misconduct as described above was not part of treatment or counseling.

6 40. Plaintiffs are informed and believe, and thereon allege, that the remaining
7 Defendants, and each of them, ratified Defendant ATKINSON'S actions and failed to act to
8 prevent those actions, despite having knowledge that Defendant ATKINSON was unfit to treat
9 and/or be alone with female patients, and knew, or should have known, that his inappropriate
10 conduct was occurring.

11 41. As a proximate result of the above, Plaintiffs suffered damages as previously set
12 forth in this Complaint.

13 WHEREFORE Plaintiffs pray for judgment as set forth below.

14 **FIFTH CAUSE OF ACTION**

15 (Against All Defendants for Breach of Fiduciary Duty)

16 42. Plaintiffs reallege and incorporate by reference the allegations set forth in the
17 other paragraphs of this Complaint, except for those allegations that are inconsistent with a cause
18 of action for breach of fiduciary duty.

19 43. Because of the position of authority and trust occupied by Defendants, and each
20 of them, and the nature of the treatment, and the transference phenomenon, Plaintiffs were
21 induced to place special trust and confidence in Defendants with respect to the course of the
22 treatment.

23 44. Because of the relationship of confidentiality and trust fostered by Defendants,
24 and each of them, and Plaintiffs' reliance on the confidence of each of them, a fiduciary
25 relationship existed between Plaintiffs and Defendants.

26 45. Defendants fostered this fiduciary relationship from the beginning until the end of
27 Plaintiffs' treatment.

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1 46. Defendants failed to act to protect Plaintiffs from harm, and acted in a way to
2 cause Plaintiffs harm, by placing their interests ahead of the safety and well-being of Plaintiffs.

3 47. Defendants' actions in this regard constitute a breach of fiduciary relationship that
4 existed between Plaintiffs and Defendants. As a direct and proximate foreseeable result of
5 Defendants' conduct, Plaintiffs have been injured as previously set forth.

6 48. Defendants' actions in this regard were despicable, and done willfully and with a
7 conscious disregard of Plaintiffs' rights, with the intent to cause injury to Plaintiffs.

8 49. As a proximate result of the above, Plaintiffs suffered damages as otherwise
9 alleged in this Complaint.

10 WHEREFORE Plaintiffs pray for judgment as set forth below.

11 **SIXTH CAUSE OF ACTION**

12 (Against All Defendants for Sexual Harassment [Civ. Code, § 51.9])

13 50. Plaintiffs reallege and incorporate by reference the allegations set forth in the
14 other paragraphs of this Complaint, except for those allegations that are inconsistent with a cause
15 of action for sexual harassment.

16 51. At all times herein mentioned, Civil Code section 51.9 was in full force and
17 effect, and prohibited sexual harassment in the context of certain business, service, and
18 professional relationships, including relationships that are substantially similar to the relationship
19 between a physician, psychotherapist, or dentist and their clients.

20 52. The chiropractic relationship between Defendant ATKINSON, a licensed
21 chiropractor, and Plaintiffs, who were his patients, constitutes a business, service and
22 professional relationship, as such a relationship is substantially similar to the relationship
23 between a physician and his patient.

24 53. Defendant ATKINSON made sexual advances, solicitations, sexual requests, and
25 engaged in other verbal, visual, and physical conduct of a sexual nature, or of a hostile nature
26 based on gender, that was unwelcome to Plaintiffs, and that was severe or pervasive.

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1 54. Because of Plaintiffs' symptoms and vulnerability, Plaintiffs were unable to easily
2 terminate the chiropractor and patient relationship without tangible hardship until Defendant
3 ATKINSON had already completed his sexual assaults on Plaintiffs.

4 55. As a proximate result of the above, Plaintiffs suffered damages as previously set
5 forth in this Complaint.

6 WHEREFORE Plaintiff prays for judgment as set forth below.

7 **SEVENTH CAUSE OF ACTION**

8 (Against All Defendants, Except ATKINSON, for Negligent Hiring,
9 Supervision, and Retention of Unfit Employee)

10 56. Plaintiffs reallege and incorporate by reference the allegations set forth in the
11 other paragraphs of this Complaint, except for those allegations that are inconsistent with a cause
12 of action for negligent hiring, supervision, and retention.

13 57. At all times herein mentioned, Defendants, and each of them, negligently hired,
14 supervised, and retained Defendant ATKINSON, knowing that Defendant ATKINSON would be
15 hired to engage in the provision of chiropractic care to Plaintiffs, and, as such, would be in a
16 position of power, trust, and authority over Plaintiffs.

17 58. Defendants, and each of them, had a duty to supervise the conduct of
18 employees/agents, other individuals on the premises, and/or generally Defendant ATKINSON,
19 and to enforce and administer rules and other provisions and safety devices and supervision
20 necessary for the safety and protection of the patients, including Plaintiffs. In particular,
21 Defendants, and each of them, had a duty to supervise the conduct of each of the other
22 Defendants, any other individuals on said premises, and the complete operation of ATKINSON
23 APC, DIABLO VIEW, and DOES 1 to 25 so as to prevent and not to cause the type of injuries
24 that Plaintiffs sustained due to the negligent care and supervision of Defendants, and each of
25 them.

26 59. Defendants, and each of them, by act or omission, failed to adequately or
27 sufficiently oversee, manage, and otherwise control the premises of ATKINSON APC, DIABLO
28 VIEW, and DOES 1 to 25 so as to prevent or not to cause harm to Plaintiffs.

1 60. Defendants, and each of them, had a duty to exercise reasonable diligence in ,
2 hiring, and screening employees, to provide the necessary care and/or treatment to Plaintiffs.

3 61. Defendants, and each of them, failed to exercise such diligence in hiring and
4 screening of all other employee/agent, including Defendant ATKINSON and other
5 employees/agents and/or failed to sufficiently staff Defendants' facilities.

6 62. Defendants, and each of them, failed to exercise diligence in allowing, requesting,
7 or permitting Defendants, and each of them, to handle the health care of Plaintiffs.

8 63. Defendants, and each of them, were negligent and careless in that they failed to
9 exercise ordinary care in supervising each of the other Defendants and/or other individuals on
10 said premises so as to prevent and not to cause the type of injuries which Plaintiffs sustained due
11 to the negligent care and supervision of Defendants, and each of them.

12 64. Defendants knew, or should have known, due to their capacity as supervisors,
13 overseers, and/or care providers, all that was going on with regard to the care and treatment of
14 patients, including Plaintiffs, for which they were responsible. As such, Defendants knew, or
15 should have known, all information necessary regarding the premises, and the individuals on the
16 premises, in order to assure that Plaintiffs received the proper medical care and treatment.
17 Therefore, Defendants, knew or should have known, and consequently should have acted to
18 prevent the misconduct and/or harm which occurred on said premises more specifically pled
19 elsewhere in this Complaint and incorporated by reference herein.

20 65. Plaintiff is informed and believes and thereon alleges that in doing the acts
21 heretofore alleged, Defendants ATKINSON APC, DIABLO VIEW, and DOES 1 to 25, knew or,
22 in the exercise of reasonable diligence, should have known that Defendant ATKINSON was
23 incompetent and unfit to perform the duties for which he was employed and that an undue risk to
24 persons such as Plaintiffs would exist because of the employment.

25 66. Defendants ATKINSON APC, DIABLO VIEW, and DOES 1 to 25 were
26 negligent for their acts and omissions, including, but not limited to:

27 A. Failing to provide adequate training to Defendant ATKINSON regarding
28 the dangers of his manner of treatment.

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- B. Failing to provide adequate warning, advice, and training to ATKINSON regarding sexualized relationships with patients.
- C. Failing to provide adequate training and advice regarding dangers of health care providers entering into sexual relationships with and sexual contact of patients.
- D. Failing to adequately train, advise, and supervise their staff to recognize and report inappropriate and negligent behavior by a chiropractor, including spending an inordinately short amount of time with patients such that they could not be properly assessed; treating a patient without proper assessment; demonstrating that he was not properly assessing and treating them; not adjusting the treatment after patients got worse.
- E. Failing to adequately investigate and monitor ATKINSON.
- F. Failing to take sufficient steps to supervise ATKINSON by monitoring his records and/or behavior.
- G. Plaintiff is informed and believes that employees and/or agents of ATKINSON APC, DIABLO VIEW, and DOES 1 to 25 knew of ATKINSON'S negligent and inappropriate treatment of patients, including, but not limited to, ATKINSON'S spending an inordinate short amount of time with patients such that they could not be properly assessed; treating patients behind closed doors; demonstrating that he was not properly assessing and treating them; not adjusting the treatment after patients, including Plaintiffs, got worse; failing to report these violations and/or failing to take prompt, appropriate corrective actions to solve the problem.

67. As a proximate result of the negligence of Defendants, and each of them, Plaintiffs were injured as otherwise set forth in this Complaint.

