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County of Stanislaus
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Attorneys for Plaintiff DOMINIC GARCIA

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF STANISLAUS**

10 **DOMINIC GARCIA,**

11 **Plaintiff,**

12 **vs.**

13 **COSMED STERILIZATION AND**
14 **FUMIGATION SERVICES, INC.; PHIL**
15 **DELEON; and DOES 1-10, inclusive,**

16 **Defendants.**

Case No.: CV-20-005263

**COMPLAINT FOR DAMAGES AND
PENALTIES FOR**

1. **VIOLATION OF CALIFORNIA EQUAL
PAY ACT**
2. **UNLAWFUL PRACTICES**
3. **HARASSMENT**
4. **FAILURE TO ACCOMMODATE**
5. **FAILURE TO ENGAGE IN
INTERACTIVE PROCESS**
6. **RETALIATION**
7. **FAILURE TO PREVENT
DISCRIMINATION, HARASSMENT,
AND RETALIATION**
8. **VIOLATIONS OF LABOR CODE § 2698
ET SEQ. (PAGA)**

JURY TRIAL DEMANDED

23 Plaintiff Dominic Garcia ("Garcia") brings this action against Defendant Cosmed
24 Sterilization and Fumigation Services, Inc. ("Cosmed"); Phil Deleon ("Deleon"); and Does 1-10,
25 inclusive as referred to herein, for general, compensatory, and statutory damages, penalties,
26 interest, costs, and attorneys' fees resulting from the defendants' unlawful conduct. As grounds
27 Garcia therefore alleges:

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1 **PARTIES**

2 1. Garcia is and/or was at times relevant herein an individual and a resident of
3 California.

4 2. Cosmed is and/or was at times relevant herein a Nevada corporation qualified to do
5 business in California.

6 3. Deleon is and/or was at all times relevant herein an individual; a resident of
7 California; and a “supervisor” as defined by Gov. Code § 12926(t).

8 4. Cosmed and Does 1-10 are referred to collectively herein as “Defendants.”

9 5. Garcia is not aware of the true names and capacities of the defendants sued herein as
10 Does 1-10, whether individual, corporate, associate, or otherwise, and, therefore, sues such
11 defendants by these fictitious names. Garcia will amend this complaint to allege their true names
12 and capacities when ascertained. Garcia is informed and believes, and on that basis alleges, that
13 each of the fictitiously named defendants is responsible in some manner for the occurrences herein
14 alleged and that Garcia’s injuries herein alleged were legally caused by such defendants. Unless
15 otherwise indicated, each defendant was acting within the course and scope of said agency and/or
16 employment, with the knowledge and/or consent of said co-defendant.

17 **VENUE AND JURY TRIAL DEMAND**

18 6. Venue is proper in this Court because the unlawful acts alleged herein as to Garcia
19 took place in Stanislaus County and Garcia’s place of employment with Cosmed was within
20 Stanislaus County.

21 7. Garcia hereby demands a jury trial.

22 **GENERAL ALLEGATIONS**

23 8. Garcia was employed in a non-exempt, hourly position by Cosmed in Newman,
24 California, from September 10, 2018, until his unlawful termination on February 10, 2020.

25 9. Throughout Garcia’s employment, including within the past year, Cosmed
26 knowingly and intentionally paid employees, including Garcia, at wage rates less than the rates to
27 employees of another race and ethnicity for substantially similar work. Specifically, Cosmed has
28 paid Hispanic and other minority workers, including black employees, at wage rates less than the

1 rates paid to non-Hispanic white employees for substantially similar work.

2 10. Cosmed paid Garcia, who is Hispanic, less than non-Hispanic white employees with
3 significantly less experience for substantially similar work, based on his race and ethnicity.

4 11. Garcia complained of these unequal pay violations to Cosmed, including Cosmed's
5 upper management such as Diane Newell ("Newell"), Cosmed's Plant Manager in Newman,
6 California.

7 12. Nevertheless, Cosmed persisted with this discriminatory employment practice.

8 13. In addition, and also throughout Garcia's employment, Cosmed adopted and
9 enforced, including directly against Garcia by Newell, the following unlawful "English-only
10 policy," an unlawful employment practice under Gov. Code § 12951: "While you are within the
11 warehouse on company time we require that all communication be in English only for
12 comprehension and safety of all employees."

13 14. This policy is unlawful because (1) it is not justified by a "business necessity," as
14 defined in Gov. Code § 12951(b); and (2) Cosmed failed to notify its employees, including Garcia,
15 of the circumstances and the time when the language restriction is required to be observed and of
16 the consequences for violating the language restriction.

17 15. Furthermore, Cosmed Deleon, Garcia's supervisor at Cosmed, harassed Garcia
18 based on actual and perceived disability.

19 16. Garcia suffers from diabetes, which was known to Cosmed and Deleon during
20 Garcia's employment with Cosmed.

21 17. For instance, on one occasion, Deleon punished Garcia by sending him home from
22 work for going to the bathroom after Garcia explained that he is diabetic and needed to go to the
23 bathroom due to the diabetes.

24 18. Instead of allowing this reasonable accommodation for Garcia's disability, Deleon
25 mocked Garcia, telling him, "You can't just go to the bathroom whenever you want" and demanded
26 "proof" that Garcia is diabetic.

27 19. On another occasion, Deleon disclosed Garcia's private medical information to his
28 coworkers while Garcia was on leave due to a foot infection. In regards to his request for time off

1 as a reasonable accommodation, Garcia sent Deleon pictures of his infected foot along with a
2 doctor's note.

3 20. When Garcia returned to work, a co-worker approached Garcia and said, "Damn
4 your foot is nasty as fuck." This co-worker explained to Garcia that Deleon showed him pictures of
5 Garcia's infected foot and said that Garcia was "probably faking" the condition.

6 21. On yet another occasion, in December 2019, Deleon was yelling and otherwise
7 acting in a hostile manner. Garcia informed Newell that he was having an anxiety attack due to
8 Deleon's behavior. Newell simply told Garcia to leave.

9 22. Later that same day, Newell called Garcia into the office. Deleon, who was also
10 present in the office, stated that he did not "believe" that Garcia has anxiety and again demanded a
11 doctor's note. Afterwards, Garcia was sent home from work.

12 23. In February 2020, Garcia again complained to Newell of Deleon's unlawful
13 harassment after a co-worker told him that Deleon was openly mocking Garcia's anxiety by talking
14 about Garcia's medical condition to co-workers.

15 24. That same day, Newell called Garcia into the office and denied that Deleon made
16 any such comments. Garcia told her that Deleon did make the comments and that other employees
17 witnessed it. Newell then said, "That's it, you're done - give me your keys."

18 25. As they walked to his locker to collect his personal possessions, Garcia asked
19 Newell why he was being fired. Newell responded, "Insubordination."

20 26. In reality, Cosmed, through its high-level management, including Plant Manager
21 Newell, terminated Garcia in retaliation for complaining of and opposing unlawful employment
22 practices, including race and ethnicity and disability discrimination and disability harassment.

23 27. Aware of the unlawful discrimination, harassment, and retaliation through its
24 managing agents, Cosmed did not take all reasonable steps necessary to prevent the discrimination,
25 harassment, and retaliation from occurring.

26 28. On September 29, 2020, Garcia filed a complaint with the Department of Fair
27 Employment & Housing ("DFEH") against Cosmed and Deleon based on the unlawful conduct
28 described herein. That same day, the DFEH issued Garcia a right-to-sue notice, which Garcia

1 served on Cosmed and Deleon by certified mail.

2 **FIRST CAUSE OF ACTION**
3 **VIOLATIONS OF CALIFORNIA EQUAL PAY ACT**
4 **(Labor Code § 1197.5)**
5 **Against Defendants**

6 29. Garcia hereby realleges and incorporates by reference each and every allegation set
7 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
8 allegations of this cause of action.

9 30. The California Equal Pay Act prohibits an employer from paying any of its
10 employees at wage rates less than the rates paid to employees of another race or ethnicity for
11 substantially similar work, when viewed as a composite of skill, effort, and responsibility, and
12 performed under similar working conditions, except where the employer demonstrates: (1) The
13 wage differential is based upon one or more of the following factors: (A) A seniority system, (B) A
14 merit system, (C) A system that measures earnings by quantity or quality of production, (D) A
15 bona fide factor other than race or ethnicity; (2) Each factor relied upon is applied reasonably; (3)
16 The one or more factors relied upon account for the entire wage differential; (3) Prior salary shall
17 not justify any disparity in compensation.

18 31. Nevertheless, as set forth above, Defendants knowingly and intentionally paid
19 Hispanic workers, including Garcia, and other minority workers, including black employees, at
20 wage rates less than the rates paid to non-Hispanic white employees for substantially similar work.

21 32. As a result, Garcia has been injured.

22 33. Defendants' actions towards Garcia were committed or ratified by Defendants and
23 their managing agents in an oppressive, fraudulent, and malicious manner in order to injure or
24 damage Garcia, thereby justifying an award of punitive damages.

25 34. Wherefore, Garcia seeks relief as set forth below.

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SECOND CAUSE OF ACTION
VIOLATIONS OF GOV. CODE §§ 12926, 12940, 12951
(Unlawful Practices)
Against Defendants

35. Garcia hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

36. Under the California Fair Employment and Housing Act (“FEHA”) it is an unlawful practice for an employer to discriminate against an employee because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Gov. Code § 12940(a).

37. It is also an unlawful employment practice to adopt or enforce a policy that limits or prohibits the use of any language in any workplace, unless both the following conditions exist: (a) The language restriction is justified by a business necessity, (2) The employer has notified its employees of the circumstances and the time when the language is required to be observed and of the consequences for violating the language restriction. Gov. Code § 12951(a).

38. Nevertheless, as set forth above, Defendants engaged in unlawful practices in violation of FEHA based on actual and perceived race, ethnicity, and disability.

39. As a result, Garcia has been injured.

40. Defendants’ actions towards Garcia were committed or ratified by Defendants and their managing agents in an oppressive, fraudulent, and malicious manner in order to injure or damage Garcia, thereby justifying an award of punitive damages.

41. Wherefore, Garcia seeks damages as set forth below.

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THIRD CAUSE OF ACTION
VIOLATIONS OF GOV. CODE § 12940(j)
(Harassment)
Against Defendants and Deleon

42. Garcia hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

43. FEHA prohibits an employer from harassing an employee because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Gov. Code § 12940(j).

44. Nevertheless, as set forth above, Defendants and Deleon harassed Garcia based on actual and perceived race, ethnicity, and disability

45. As a result, Garcia has been injured.

46. Defendants' and Deleon's actions towards Garcia were committed and/or ratified by Defendants and Deleon and/or their managing agents in an oppressive, fraudulent, and malicious manner in order to injure or damage Garcia, thereby justifying an award of punitive damages.

47. Wherefore, Garcia seeks relief as set forth below.

FOURTH CAUSE OF ACTION
VIOLATIONS OF GOV. CODE § 12940(m)
(Failure to Accommodate)
Against Defendants

48. Garcia hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

49. FEHA requires an employer to make reasonable accommodation for the known physical or mental disability of an applicant or employee. Gov. Code § 12940(m).

50. Nevertheless, as set forth above, Defendants refused to make reasonable accommodation for known physical and mental disabilities of Garcia.

51. As a result, Garcia has been injured.

1 52. Defendants' actions towards Garcia were committed or ratified by Defendants and
2 their managing agents in an oppressive, fraudulent, and malicious manner in order to injure or
3 damage Garcia, thereby justifying an award of punitive damages.

4 53. Wherefore, Garcia seeks damages as set forth below.

5 **FIFTH CAUSE OF ACTION**
6 **VIOLATIONS OF GOV. CODE § 12940(n)**
7 **(Failure to Engage in Timely, Good Faith, Interactive Process)**
8 **Against Defendants**

9 54. Garcia hereby realleges and incorporates by reference each and every allegation set
10 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
11 allegations of this cause of action.

12 55. FEHA requires an employer "to engage in a timely, good faith, interactive process
13 with the employee or applicant to determine effective reasonable accommodations, if any, in
14 response to a request for reasonable accommodation by an employee or applicant with a known
15 physical disability or known medical condition." Gov. Code § 12940(n).

16 56. Nevertheless, as set forth above, Defendants failed to engage in a timely, good faith,
17 or interactive process with Garcia.

18 57. As a result, Garcia has been injured.

19 58. Defendants' actions towards Garcia were committed or ratified by Defendants and
20 their managing agents in an oppressive, fraudulent, and malicious manner in order to injure or
21 damage Garcia, thereby justifying an award of punitive damages.

22 59. Wherefore, Garcia seeks damages as set forth below.

23 **SIXTH CAUSE OF ACTION**
24 **VIOLATIONS OF GOV. CODE §§ 12940(h), (m)(2)**
25 **(Retaliation)**
26 **Against Defendants**

27 60. Garcia hereby realleges and incorporates by reference each and every allegation set
28 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
allegations of this cause of action.

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1 61. Under FEHA, it is unlawful for an employer to retaliate against an employee for
2 requesting accommodation or for exercising rights or opposing practices forbidden under FEHA.
3 Gov. Code §§ 12940(h), (m)(2).

4 62. Nevertheless, as set forth above, Defendants retaliated against Garcia for requesting
5 accommodation and for exercising rights and opposing practices forbidden under FEHA.

6 63. As a result, Garcia has been injured.

7 64. Defendants' actions towards Garcia were committed or ratified by Defendants and
8 their managing agents in an oppressive, fraudulent, and malicious manner in order to injure or
9 damage Garcia, thereby justifying an award of punitive damages.

10 65. Wherefore, Garcia seeks damages as set forth below.

11 **SEVENTH CAUSE OF ACTION**
12 **VIOLATIONS OF GOV. CODE §§ 12940(j)(1), (k)**
13 **(Failure to Prevent)**
 Against Defendants

14 66. Garcia hereby realleges and incorporates by reference each and every allegation set
15 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
16 allegations of this cause of action.

17 67. FEHA requires an employer to take all reasonable steps necessary to prevent
18 discrimination, harassment, and retaliation from occurring. Gov. Code §§ 12940(j)(1), (k).

19 68. Nevertheless, as set forth above, Defendants failed to take all reasonable steps
20 necessary to prevent discrimination, harassment and retaliation from occurring as to Garcia.

21 69. As a result, Garcia has been injured.

22 70. Defendants' actions towards Garcia were committed or ratified by Defendants and
23 their managing agents in an oppressive, fraudulent, and malicious manner in order to injure or
24 damage Garcia, thereby justifying an award of punitive damages.

25 71. Wherefore, Garcia seeks damages as set forth below.

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EIGHTH CAUSE OF ACTION
VIOLATIONS OF LABOR CODE § 2698 *ET SEQ.*
(Private Attorneys General Act)
Against Defendants

72. Garcia hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

73. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may pursue a civil action arising under the California Private Attorneys General Act of 2004 (“PAGA”) after the following requirements have been met:

- a. The aggrieved employee shall give written notice by certified mail to the LWDA and the employer (hereinafter “Employee’s Notice”) of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA’s Notice, or if the LWDA does not provide notice within 65 calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to Labor § 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

74. On September 15, 2020, Garcia provided written notice by online submission to the LWDA, and by certified mail Cosmed of Cosmed’s violations of the Labor Code set forth below, including the facts and theories to support the alleged violations. As of today’s date, more than 65 days have passed without the LWDA providing written notice that it intends to investigate the allegations in the September 15, 2020 notice. Accordingly, Garcia has satisfied the administrative prerequisites under Labor Code § 2699.3 in effect at the time of the postmark of his notice to bring a civil action to recover penalties against Cosmed under PAGA.

1 75. Within the relevant time period, including within the past year, and in accordance
2 with a uniform, statewide policy throughout California as to all of its current and former non-
3 exempt California employees, Cosmed has knowingly and intentionally paid non-exempt
4 employees at wage rates less than the rates paid to employees of another race and ethnicity for
5 substantially similar work. Specifically, Cosmed has paid, and continues to pay, non-exempt
6 Hispanic and other minority workers, including black employees, at wage rates less than the rates
7 paid to non-Hispanic white employees for substantially similar work, in violation of Labor Code §
8 1197.5(b). Cosmed paid Garcia, who is Hispanic, less than non-Hispanic white employees with
9 significantly less experience for substantially similar work, based on his race and ethnicity. Garcia
10 complained of these unequal pay violations to Cosmed, including Cosmed's upper management
11 such as Newell, Cosmed's Plant Manager in Newman, California. Nevertheless, Cosmed has
12 persisted with these unequal pay violations.

13 76. Also within the relevant time period, including within the past year, and in
14 accordance with a uniform, statewide policy throughout California as to all of its current and
15 former non-exempt California employees, Cosmed failed to pay overtime wages at the correct rate
16 to its non-exempt California employees, current and former, including Garcia, in violation of Labor
17 Code § 510, 558, 1194, and 1198. Specifically, Cosmed has failed to include non-discretionary
18 bonuses when calculating these individuals' "regular rate of pay" for purposes of overtime earned
19 in the same period as the bonuses, again, in violation of Labor Code § 510, 558, 1194, and 1198.

20 77. Also within the relevant time period, including within the past year, and in
21 accordance with a uniform, statewide policy throughout California as to all of its current and
22 former non-exempt California employees, Cosmed has failed to pay sick time at the correct rate to
23 its non-exempt California employees, current and former, in violation of Labor Code § 246, for the
24 same reasons that it failed to pay overtime at the correct rate, namely, Cosmed has failed to include
25 non-discretionary bonuses when calculating these individuals' "regular rate of pay" for purposes of
26 paid sick time.

27 78. Also within the relevant time period, including within the past year, and in
28 accordance with a uniform, statewide policy throughout California as to all of its current and

1 former non-exempt California employees, and as a result of the overtime-rate and sick-rate
2 violations set forth above, Cosmed has failed to pay wages in a timely manner, in violation of
3 Labor Code § 204, because it has yet to compensate the non-exempt individuals in California to
4 whom it underpaid overtime and paid sick time – because, i.e., of Cosmed’s failure to properly
5 calculate the “regular rate of pay” in regards to overtime and paid sick time – well beyond the
6 deadline (i.e., several pay periods have passed since these wages were payable in most instances) to
7 pay such wages under Labor Code § 204.

8 79. Also within the relevant time period, including within the past year, and in
9 accordance with a uniform, statewide policy throughout California as to all of its former non-
10 exempt California employees, and as a result of the overtime-rate and sick-rate violations set forth
11 above, Cosmed has failed to pay wages immediately upon termination, or within 72 hours of
12 resignation, in violation of Labor Code §§ 201 and 202, respectively, because it did not compensate
13 these former non-exempt California employees for all overtime and paid sick time – because, i.e.,
14 of Cosmed’s failure to properly calculate the “regular rate of pay” in regards to overtime and paid
15 sick time – either immediately at the time of termination, in violation of Labor Code § 201 (as with
16 Garcia), or within 72 hours of resignation, in violation of Labor Code § 202. In fact, Cosmed has
17 failed, to date, to compensate these individuals for the underpayments as to overtime and paid sick
18 time.

19 80. Also within the relevant time period, including within the past year, and in
20 accordance with a uniform, statewide policy throughout California as to all of its current and
21 former non-exempt California employees, and as a result of the overtime-rate and sick-rate
22 violations set forth above, Cosmed has failed to furnish complete and accurate wage statements to
23 the non-exempt individuals in California to whom it underpaid overtime and paid sick time –
24 because, i.e., of Cosmed’s failure to properly calculate the “regular rate of pay” in regards to
25 overtime and paid sick time – because the wage statements Cosmed furnished as to pay periods in
26 which overtime and/or sick time was paid at the incorrect rate fail to **accurately** show the
27 following information:

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- a. **Actual** gross wages earned, in violation of Labor Code § 226(a)(1);
- b. **Actual** total hours worked, in violation of Labor Code § 226(a)(2)
- c. **Actual** net wages earned, in violation of Labor Code § 226(a)(5); and
- d. **Actual** applicable hourly rates in effect during the pay period and the **actual** corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(9).

81. Wherefore, Garcia requests relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, the following relief is sought:

As to the First Cause of Action:

1. For compensatory, special, and general damages;
2. For restitution;
3. For punitive and/or exemplary damages;
4. For liquidated damages pursuant to Labor Code § 1197.5(h);
5. For attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 1197.5(h);
6. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civ. Code § 3287 and Labor Code § 1197.5(h); and
7. For such other and further relief as the court deems proper.

As to the Second through Seventh Causes of Action:

1. For compensatory, special, and general damages;
2. For injunctive and declaratory relief pursuant to Gov. Code § 12965, including, but not limited to, a cease-and-desist order requiring Defendants to halt their discriminatory, harassing, and retaliatory practices; an order requiring Defendants to conduct training for all its employees, supervisors, and management on the requirements of the FEHA; and an order requiring Defendants to develop and

1 promulgate an effective policy for preventing discrimination, harassment, and
2 retaliation;

3 3. For punitive and/or exemplary damages;

4 4. For statutory attorneys' fees and costs, including but not limited to those available
5 under Gov. Code § 12965(b);

6 5. For prejudgment and post-judgment interest according to any applicable provision
7 of law or as otherwise permitted by law, including but not limited to that available
8 under Civ. Code § 3287; and

9 6. For such other and further relief as the court deems proper.

10 **As to the Eighth Cause of Action:**

11 1. For civil penalties recoverable under PAGA, including but not limited to those
12 available under Labor Code §§ 226.3 and 2699(f); and

13 2. For statutory attorneys' fees and costs, including but not limited to those available
14 under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);

15 3. For prejudgment and post-judgment interest according to any applicable provision
16 of law or as otherwise permitted by law, including those available under Civil Code
17 §§ 3287(a) and 3289(b); and

18 4. For such other and further relief as the court deems just and proper.

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20 **DATED:** November 25, 2020

MAYALL HURLEY P.C.

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22 By



23 NICHOLAS F. SCARDIGLI
24 Attorneys for Plaintiff
25 DOMINIC GARCIA
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