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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

JACK SAMONTE, as an individual and on behalf
of all others similarly situated, and as a private
attorney general,

Plaintiff,

vs.

1125 SIR FRANCIS DRAKE BOULEVARD
OPERATING COMPANY, LLC d/b/a
KENTFIELD HOSPITAL, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **FCS055511**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATIONS OF:**

- (1) LAB. CODE §§ 201-204, 246;
- (2) LAB. CODE §§ 510, 558, 1194;
- (3) LAB. CODE § 226(a);
- (4) BUS. & PROF. CODE §§ 17200 *ET SEQ.*;
AND
- (5) LAB. CODE §§ 2698 *ET SEQ.*

DEMAND OVER \$25,000.00

**ASSIGNED TO
JUDGE ALESIA JONES
FOR ALL PURPOSES**

FILED/ENDORSED
Clerk of the Superior Court

OCT 13 2020

By **K. SHRONTZ**
DEPUTY CLERK

BY FAX ACE ATTORNEY SERVICE

1000 Broadway, Oakland, CA 94607
510-465-1000

1 On behalf of himself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Jack Samonte, submits this Class and
3 Representative Action Complaint against 1125 Sir Francis Drake Boulevard Operating Company, LLC
4 d/b/a Kentfield Hospital, and Does 1 through 50 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic illegal employment practices
7 resulting in violations of the California Labor Code against individuals who worked for Defendants.
8 The Complaint seeks damages, restitution, penalties, and other relief for Defendants’ violations of
9 Labor Code sections 201-204, 221-224, 226(a), 246, 510, 558, and 1194.¹

10 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
11 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
12 failing to pay sick pay at the regular rate of pay, failing to pay overtime wages at one and one-half
13 times (or double-time wages at two times) the regular rate of pay, and failing to provide accurate
14 itemized wage statements.

15 3. Defendants routinely fail to pay sick pay at the regular rate of pay. Specifically, Plaintiff
16 and other non-exempt employees regularly earn non-discretionary incentives, shift differentials, or
17 premium payments that increase their regular rate of pay. When Plaintiff and other non-exempt
18 employees earn such earnings during weeks in which they were paid sick pay, Defendants do not
19 consider such earnings for purposes of paying sick pay to Plaintiff and other non-exempt employees.
20 Instead, Defendants pay sick pay at employees’ base rate of pay.

21 4. Defendants also routinely fail to pay all overtime and double-time wages due to Plaintiff
22 and other non-exempt employees. Specifically, whenever Plaintiff and other non-exempt employees
23 earn non-discretionary incentives, shift differentials, or premium payments that increase their regular
24 rate of pay during weeks in which they worked overtime or double-time hours, Defendants do not
25 consider such earnings or properly calculate the regular rate of pay for overtime and double-time
26 purposes. Defendants thus underpay all overtime and double-time wages due.

27
28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

5. As a result of the above practices, Defendants also routinely fail to timely pay Plaintiff and other non-exempt employees all of their sick pay, overtime, and double-time wages, which are neither timely paid during employment nor timely paid upon termination of employment. Similarly, Defendants routinely fail to provide itemized wage statements that show accurate hourly rates of pay, gross wages earned, and net wages earned.

6. Finally, Defendants also routinely fail to provide accurate itemized wage statements to Plaintiff and other non-exempt employees. Specifically, Defendants furnished wage statements that do not accurately itemize the total hours worked. Instead, the wage statements show inaccurate total hours worked as they routinely include non-worked hours, such as “Holiday Nonwork” and “PTO” hours, in the total hours worked itemized on the wage statements.

7. Plaintiff is informed and believes that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny its employees the above stated rights and benefits.

8. The policies, practices, and customs of Defendants resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the Labor Code.

JURISDICTION AND VENUE

9. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of Defendants' violations of Sections 201-204, 226(a), 246, 510, 558, and 1194, and of the Unfair Competition Law, codified at Business and Professions Code sections 17200 *et seq.* (the "UCL").

10. Venue is proper as Plaintiff resides in the County of Solano.

PARTIES

11. Plaintiff began working for Defendants in or about April of 2014 and worked in California for Defendants for 30 or more days within a year. Until his employment as a respiratory therapist ended in or about October of 2020, Plaintiff was paid on an hourly basis as a non-exempt employee who regularly worked more than eight hours in a workday and 40 hours in a workweek.

12. Plaintiff regularly earned non-discretionary incentives, shift differentials, or premium payments. When Plaintiff earned such compensation during weeks in which he also was paid sick pay,

1 his sick pay was paid at his base rate of pay. When Plaintiff earned such compensation during weeks in
2 which he worked overtime or double-time hours, Defendants did not consider such compensation when
3 calculating the regular rate of pay for overtime and double-time purposes. Plaintiff was thus not timely
4 paid or ever paid all sick pay, overtime, and double-time wages due. Moreover, Plaintiff received
5 inaccurate wage statements that did not itemize the correct hourly rates of pay, gross wages earned, net
6 wages earned, or total hours worked. Plaintiff thus is a victim of the policies, practices, and customs of
7 Defendants complained of in this action in ways that have deprived him of the rights guaranteed by the
8 Labor Code and the UCL.

9 13. Plaintiff is informed and believes that 1125 Sir Francis Drake Boulevard Operating
10 Company, LLC d/b/a Kentfield Hospital was and is a Delaware limited liability company and that at all
11 times herein mentioned it and Does 1 through 50, were and are business entities, individuals, or
12 partnerships that were and are licensed to do business and actually doing business in the State of
13 California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are
14 subject to Sections 201-204, 226(a), 246, 510, 558, and 1194.

15 14. Plaintiff does not know the true names or capacities of the defendants sued herein as
16 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are
17 sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true
18 names and capacities are known. Plaintiff is informed and believes that each of said fictitious
19 defendants was responsible in some way for the matters alleged herein and proximately caused the
20 illegal employment practices, wrongs, and injuries complained of herein.

21 15. At all times herein mentioned, each of said Defendants participated in the doing of the
22 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
23 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
24 scope of said agency and employment.

25 16. Plaintiff is informed and believes that at all times material hereto, each of said
26 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
27 each of the other Defendants and was acting within the course and scope of such agency, employment,
28 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by

certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

17. Plaintiff is informed and believes that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

CLASS ACTION ALLEGATIONS

18. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes: (i) all current and former non-exempt employees of Defendants in the State of California since April 18, 2016, who were paid sick pay in workweeks in which they earned non-discretionary incentives, shift differentials, or premiums (the “Sick Pay Class”); (ii) all current and former non-exempt employees of Defendants in the State of California since April 18, 2016, who were paid overtime in workweeks in which they earned non-discretionary incentives, shift differentials, or premiums (the “Overtime Class”); and (iii) all current and former non-exempt employees of Defendants in the State of California since April 18, 2019, who were provided wage statements with non-worked hours, including, but not limited to, “Holiday Nonwork” and/or “PTO” hours (the “Wage Statement Class”). The Sick Pay Class, Overtime Class, and Wage Statement Class are collectively referred to as the “Class.”

19. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes that Defendants violated Sections 201-204, 226(a), 246, 510, 558, and 1194 and the UCL against Plaintiff and other non-exempt employees who were provided wage statements with non-worked hours, such as “Holiday Nonwork” and “PTO,” or who earned non-discretionary incentives, shift differentials, or premiums in workweeks that they were paid sick pay, overtime, or double-time wages.

20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class. Plaintiff’s attorneys are ready, willing, and

1 able to fully and adequately represent Plaintiff and the Class. Plaintiff's attorneys have prosecuted and
2 settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class
3 actions currently pending in California state and federal courts.

4 21. **Common Question of Law and Fact:** There are predominant common questions of law
5 and fact and a community of interest among the claims of Plaintiff and of the Class. Plaintiff is
6 informed and believes that Defendants uniformly administer a corporate policy and practice of failing
7 to pay sick pay at the regular rate of pay, failing to pay overtime wages at one and one-half times (or
8 double-time wages at two times) the regular rate of pay, and failing to provide accurate itemized wage
9 statements.

10 22. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
11 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the
12 Class suffered. As with other members of the Class, Plaintiff regularly earned non-discretionary
13 incentives, shift differentials, or premium payments. When Plaintiff earned such compensation during
14 weeks in which he also was paid sick pay, his sick pay was paid at his base rate of pay. When Plaintiff
15 earned such compensation during weeks in which he worked overtime or double-time hours,
16 Defendants did not consider such compensation when calculating the regular rate of pay for overtime
17 and double-time purposes. Moreover, Plaintiff received inaccurate wage statements that did not itemize
18 the correct hourly rates of pay, gross wages earned, net wages earned, or total hours worked. Plaintiff
19 thus is a member of the Class and has suffered the alleged violations of the Labor Code.

20 23. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
21 in establishing minimum working conditions and requirements in California. These labor standards
22 protect employees from onerous terms and conditions of employment or exploitation by employers who
23 have superior economic and bargaining power.

24 24. The nature of this action and the format of laws available to Plaintiff and members of the
25 Class make the class action format a particularly efficient and appropriate procedure to redress the
26 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
27 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit
28 and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and

1 legal resources. Requiring each member of the Class to pursue an individual remedy would also
2 discourage the assertion of lawful claims by employees who would be disinclined to file an action
3 against their former or current employer for real and justifiable fear of retaliation and permanent
4 damage to their careers at their current or subsequent employment.

5 25. The prosecution of separate actions by individual members of the Class, even if
6 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to
7 individual members of the Class that would establish potentially incompatible standards of conduct for
8 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
9 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
10 of other members of the Class not parties to the adjudications. Further, the claims of the individual
11 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
12 the concomitant costs and expenses.

13 26. Defendants' pattern, practice, and uniform administration of corporate policy in
14 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will
15 establish the rights of Plaintiff and the Class to recover underpaid wages, including interest thereon,
16 applicable penalties, reasonable attorneys' fees, and costs of suit, pursuant to Sections 203, 210, 218,
17 218.5, 226, 248.5, 510, 558, and 1194, applicable IWC Wage Orders, the UCL, and Code of Civil
18 Procedure section 1021.5.

19 27. This action is brought for the benefit of the Class, which is commonly entitled to a
20 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class
21 is commonly entitled to restitution of those funds being improperly withheld by Defendant.

22 **FIRST CAUSE OF ACTION**

23 **Violation of Labor Code §§ 201-204 and 246**

24 **(By Plaintiff and the Sick Pay Class Against All Defendants)**

25 28. The preceding paragraphs are re-alleged and incorporated by this reference.

26 29. Section 246 provides that an employee is entitled to sick pay wages for use of accrued
27 sick leave. An employer must calculate paid sick leave by using one of two calculations: (i) "Paid sick
28 time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the

workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek,” or (ii) “Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

30. Defendants paid Plaintiff and the Sick Pay Class for sick leave at the incorrect rate of pay. Defendants paid Plaintiff and the Sick Pay Class at the base hourly rate of pay, as opposed to the regular rate of pay, which would take into account all non-discretionary incentives, shift differentials, or premiums earned, or by dividing the employees’ total wages, not including overtime premium pay, by the employees’ total hours worked in the full pay periods of the prior 90 days of employment, as required by Section 246. This resulted in underpayments of sick pay to Plaintiff and the Sick Pay Class.

31. Moreover, Section 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days. Section 204 generally provides that wages are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Consistent with Section 204, Section 246 also provides that an employer shall provide payment for sick leave taken by an employee no later than the payday for the next regular payroll period after the sick leave was taken.

32. As alleged herein and as a matter of policy and practice, Defendants routinely underpaid sick pay to Plaintiff and the Sick Pay Class. Because Defendants did not pay or timely pay Plaintiff and the Sick Pay Class all owing and underpaid sick pay wages, Defendants violate Sections 201-204, 246, and other Labor Code provisions. Defendants willfully failed to timely pay Plaintiff and the Sick Pay Class all their wages due during employment and failed to timely pay all their wages due upon the termination of their employment within the times prescribed by the Labor Code and are therefore

1 subject to applicable penalties, including a waiting time penalty pursuant to Section 203. On
2 information and belief, Defendants were advised by skilled lawyers and knew, or should have known,
3 of the mandates of the Labor Code as it relates to Plaintiff's allegations, especially since the California
4 Supreme Court has explained that "[c]ourts have recognized that 'wages' also include those benefits to
5 which an employee is entitled as a part of his or her compensation, including money, room, board,
6 clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103
7 (2007) (emphasis added).

8 33. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
9 entitles Plaintiff and the Sick Pay Class to underpaid sick pay, including interest thereon, applicable
10 penalties, attorneys' fees, and costs of suit.

11 **SECOND CAUSE OF ACTION**

12 **Violation of Labor Code §§ 510, 558, and 1194**

13 **(By Plaintiff and the Overtime Class Against All Defendants)**

14 34. The preceding paragraphs are re-alleged and incorporated by this reference.

15 35. Section 510 requires an employer to pay employees overtime at a rate of one and one-
16 half the employee's regular rate of pay for any work exceeding eight hours in a workday or forty hours
17 in a workweek.

18 36. As a matter of policy and practice, Defendants permit Plaintiff and the Overtime Class
19 to work more than eight hours in a workday or 40 hours in a workweek without proper overtime pay.
20 Defendants routinely fail to pay all overtime and double-time wages due to Plaintiff and the Overtime
21 Class. Specifically, whenever Plaintiff and the Overtime Class earn non-discretionary incentives, shift
22 differentials, or premium payments that increase their regular rate of pay during weeks in which they
23 worked overtime or double-time hours, Defendants do not consider such earnings or properly calculate
24 the regular rate of pay for overtime and double-time purposes.

25 37. As alleged herein and as a matter of policy and practice, Defendants routinely underpaid
26 overtime and double-time wages to Plaintiff and the Overtime Class. Because Defendants did not pay,
27 or timely pay, Plaintiff and the Overtime Class all owing and underpaid overtime and double-time
28 wages, Defendants willfully failed to timely pay Plaintiff and the Overtime Class all their wages due

1 during employment and failed to timely pay all their wages due upon the termination of their
2 employment within the times prescribed by the Labor Code. On information and belief, Defendants
3 were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code
4 as it relates to Plaintiff's allegations. By not timely paying Plaintiff and the Overtime Class all due
5 wages during employment and all due wages upon the separation of employment, Defendants violated
6 Sections 201-204 and owe applicable penalties, including waiting time penalties, to Plaintiff and the
7 Overtime Class.

8 38. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
9 entitles Plaintiff and the Overtime Class to underpaid overtime and double-time wages, including
10 interest thereon, applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

11 **THIRD CAUSE OF ACTION**

12 **Violation of Labor Code § 226(a)**

13 **(By Plaintiff and the Class Against All Defendants)**

14 39. The preceding paragraphs are re-alleged and incorporated by this reference.

15 40. Section 226(a) requires an employer to furnish to its employees itemized wage
16 statements that show accurate information, including without limitation, the total hours worked, all
17 applicable hourly rates in effect during the pay period, gross wages earned, and net wages earned.

18 41. As a matter of policy and practice, Defendants routinely issue itemized wage statements
19 to Plaintiff and the Wage Statement Class that do not accurately itemize the total hours worked in
20 violation of Section 226(a). Instead, the wage statements show inaccurate total hours worked as they
21 routinely include non-worked hours, such as "Holiday Nonwork" and "PTO" hours, in the total hours
22 worked itemized on the wage statements.

23 42. As a matter of policy and practice and as alleged herein, whenever Plaintiff and the
24 Class earn non-discretionary incentives, shift differentials, or premium payments that increase their
25 regular rate of pay during weeks in which they are paid sick pay, overtime, or double-time wages,
26 Defendants also routinely issue itemized wage statements to Plaintiff and the Class that show
27 inaccurate hourly rates of pay, gross wages earned, and net wages earned in violation of Section 226(a).

1 43. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
2 entitles Plaintiff and the Class to recover applicable penalties, attorneys’ fees, and costs of suit.

3 **FOURTH CAUSE OF ACTION**

4 **Violation of Business and Professions Code §§ 17200 *Et Seq.***

5 **(By Plaintiff and the Class Against All Defendants)**

6 44. The preceding paragraphs are re-alleged and incorporated by this reference.

7 45. Plaintiff is informed and believes that at Defendants have engaged and continue to
8 engage in unfair and unlawful business practices in California by utilizing the employment policies and
9 practices alleged herein in violation of Sections 246, 510, 558, and 1194.

10 46. As alleged herein, Defendants uniformly administer a corporate policy and practice of
11 routinely failing to pay sick pay at the regular rate of pay and routinely failing to pay overtime wages at
12 one and one-half times (or double-time wages at two times) the regular rate of pay. Defendants’
13 utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition
14 and provides an unfair advantage over Defendants’ competitors, as proscribed by the UCL. Defendants
15 have deprived Plaintiff and the Class the minimum working condition standards and conditions due to
16 them under the Labor Code and applicable IWC Wage Orders.

17 47. Such a pattern, practice, and uniform administration of corporate policy is unlawful and
18 entitles Plaintiff and the Class to full restitution of all resulting monies withheld, acquired, or converted
19 by Defendants, including interest thereon, attorneys’ fees, and costs of suit.

20 **FIFTH CAUSE OF ACTION**

21 **Violation of Labor Code §§ 2698 *Et Seq.***

22 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

23 48. The preceding paragraphs are re-alleged and incorporated by this reference.

24 49. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
25 *et seq.* (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of California. In this
26 capacity, Plaintiff seeks penalties for Defendants’ violations of Sections 201-204, 221-224, 226(a), 246,
27 510, 558, and 1194 committed since April 18, 2019, against all aggrieved employees.

50. As alleged herein, Defendants violate Sections 201-204, 221-224, 226(a), 246, 510, 558, and 1194 by routinely failing to pay sick pay at the regular rate of pay, failing to pay overtime wages at one and one-half times (or double-time wages at two times) the regular rate of pay, and failing to provide accurate itemized wage statements. Under Section 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

51. On or about October 9, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Section 226(a). Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

52. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable civil penalties for Defendants' violations of Section 201-204, 221-224, 226(a), 246, 510, 558, and 1194 against all aggrieved employees for the alleged period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for damages, including interest thereon, and penalties pursuant to Sections 203, 210, 218, 218.6, 226, and 248.5, and for costs and attorneys' fees;
5. Upon the Second Cause of Action for damages, including interest thereon, and penalties pursuant to Sections 203, 210, 218.6, 226, and 1194, and for costs and attorneys' fees;
6. Upon the Third Cause of Action for penalties pursuant to Section 226, and for costs and attorneys' fees;

7. Upon the Fourth Cause of Action for restitution of all funds unlawfully acquired by Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon, and for costs and attorneys' fees;

8. Upon the Fifth Cause of Action for penalties pursuant to Sections 210, 226.3, 248.5, 558, and 2699, and for costs and attorneys' fees;

9. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5, 226, and 2699, and Code of Civil Procedure section 1021.5; and

10. For such other and further relief that the Court may deem just and proper.

DATED: October 13, 2020

DIVERSITY LAW GROUP, P.C.

By:

Larry W. Lee

Simon L. Yang

Attorneys for Plaintiff