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FIRM DESCRIPTION

Called a “Big Gun” and “High Profile” by the *San Francisco Chronicle* and the *Recorder*, and a “Top Law Firm” by the *National Law Journal*, Lafayette & Kumagai LLP is a minority-owned boutique litigation firm that specializes in business torts, employment, complex litigation and trials. The twenty-three-year-old firm has earned a reputation for excellence and for providing strong advocacy. Lafayette & Kumagai received the 2011 Minority-Owned Law Firm Client Service Award, presented by the California Minority Counsel Program for outstanding client service. The firm has been listed in “Litigation Kings” for 2012 and in “Who Represents America’s Biggest Companies?” for 2008, 2010, 2011, 2012, 2014 and 2015, in *Corporate Counsel* magazine’s annual report on the law firms most used by the *Fortune* 100. Alameda City Manager (and former Oakland City Attorney) John Russo noted to the *Recorder*, “... political players involved in a case may dictate which firm is chosen. Mayor [and California Governor] Jerry Brown, for example, likes to use San Francisco’s Lafayette & Kumagai.”

TRIALS - REPRESENTATIVE CASES

Jones-Mixon v. Bloomingdale’s, Inc. - Susan Kumagai and Brian Chun of Lafayette & Kumagai LLP successfully defended a *Fortune* 500 retail company in an employment arbitration, where Claimant alleged discrimination on the basis of sex (pregnancy), failure to prevent discrimination, failure to accommodate a pregnancy-related medical condition, retaliation for taking or requesting leave under the pregnancy disability law and wrongful termination. Respondent contended Claimant was neither discriminated nor retaliated against and that Claimant was terminated for legitimate business reasons. The arbitrator’s decision resulted in an ultimate finding on behalf of the firm’s client, the Respondent, on all claims. Defense verdict – arbitration. April 2015.

Cabaniss v. Pacific Gas and Electric Company - Lafayette & Kumagai successfully defended a *Fortune* 500 energy company in a two week employment trial, where Plaintiff sought over \$2 million, claiming constructive discharge when he was demoted and reassigned from a management position to a union job two hours from his home. The reassignment decision followed an inquiry into Plaintiff’s actions during an internal investigation of his administrative clerk regarding her alleged acts of sexual harassment and threats of workplace violence. Defendant contended Plaintiff was reassigned based on legitimate business reasons and that the reassignment did not result in a constructive discharge. The jury returned a defense verdict after three hours of deliberation. Defense verdict – jury trial. August 2014.

Brown v. City of Oakland, et al. - Lafayette & Kumagai successfully represented the high profile former Oakland City Manager in a two-and-a-half week whistleblower trial. Plaintiff, formerly the City's Controller, claimed she was fired in retaliation for complaining about alleged illegal financial activities involving high government officials. Plaintiff, represented by John Burris, filed suit in U.S. District Court, Northern District of California, for Deprivation of Civil Rights Under Color of Law pursuant to the First Amendment pursuant to 42 U.S.C. § 1983. The jury deliberated for about six hours before returning a defense verdict, concluding: 1) Plaintiff was not acting as a private citizen when she complained; and 2) Plaintiff was not the victim of retaliation. At trial, defense counsel argued she was instead terminated because of her abusive behavior with subordinates and coworkers. In filing the lawsuit, Plaintiff demanded punitive damages, attorney's fees and \$1.5 million in general damages. Defense verdict - jury trial. 2012.

Cuellar, et al. v. Cingular Wireless - Lafayette & Kumagai LLP successfully represented Defendant Cingular Wireless in an eleven-week sexual harassment trial against three plaintiffs, who alleged sexual harassment and retaliation and sought punitive damages and in excess of \$5.6 million in damages and fees. Plaintiffs alleged that their manager and assistant manager sexually harassed them and, in collaboration with others, retaliated against them for complaining to upper management by among other things, denying them promotional job opportunities, terminating one and forcing the others to terminate their employment. During trial, the three plaintiffs corroborated each other's allegations and sought indirect damages for having to witness sexual harassment allegedly committed against others. The jury deliberated for just under thirty minutes before delivering a defense verdict on all claims. Defense verdict – jury trial. 2011.

Miniello v. Pacific Gas and Electric Company - Lafayette & Kumagai successfully represented Defendant Pacific Gas and Electric Company in a three-and-a-half week trial against Plaintiff who alleged age discrimination and breach of contract against his former employer of 46 years. Plaintiff asked for \$1.8 million, not including punitive damages and attorney's fees. The jury found that Plaintiff's age discrimination claim had no merit, thus eliminating the prospect of costly attorney's fees and punitive and emotional distress damages. For the breach of contract claim, the jury awarded Plaintiff \$180,000, an amount less than what Defendant had previously offered in order to settle the matter. Jury trial. 2011.

Swanson v. Shell Oil Company - In this age discrimination/termination case, the Court granted Defendant's Motion for Nonsuit after Plaintiff rested. During the trial, the Court granted Motions in Limine preventing Plaintiff from calling a statistician as an expert witness and from relying on a stray remark of age bias. Jury trial. 2010.

Goos v. Shell Oil Company - In this disability discrimination and failure to accommodate case, the United States District Court for the Northern District of California granted Defendant's Motion for Judgment as a Matter of Law. Jury trial. 2010.

Gary Aronson v. Advanced Cell Technology, Inc. - The firm represented the Defendant in a suit wherein Plaintiff sought over \$14 million in connection with an anti-dilution provision in various stock warrants. Plaintiff dismissed the case two days before the commencement of trial, after reviewing the Court's tentative decisions regarding Defendant's Motions in Limine. Jury Trial. 2010.

Intuitive Surgical, Inc. v. Ethicon-Endo Surgery, Inc. - The firm successfully represented Johnson & Johnson in this case in which Plaintiffs attempted to invoke California's non-compete statute to prevent Johnson & Johnson from enforcing its non-compete agreement with Plaintiffs. With a parallel lawsuit pending in another state, the firm successfully opposed Plaintiffs' Request for a Temporary Restraining Order and Request for a Preliminary Injunction, and successfully blocked their attempt to race to judgment in California. 2010.

Hassan v. Comerica Bank - Plaintiff sued for race discrimination and breach of contract alleging that Defendant wrongfully foreclosed on his small business loans and delayed disbursements. Lafayette & Kumagai successfully argued that the foreclosure was lawful and that disbursement delays were the result of plaintiff's incomplete disbursement requests. Defense verdict - jury trial.

Honeywell v. San Francisco Housing Authority - Plaintiff first filed suit for \$10.5 million, claiming that its contract to make energy-saving improvements to 13 senior housing complexes with the San Francisco Housing Authority was valid. The Housing Authority, represented by Lafayette & Kumagai, contended that Plaintiff invalidated the contract by failing to secure the necessary financing as required by a prior agreement and that work completed certificates had been obtained during a round of office layoffs amid the HUD takeover of the agency. When the Housing Authority denied the existence of a contract, Plaintiff filed a *qui tam* action against the Housing Authority under the federal False Claims Act, contending that the Housing Authority had applied for and received federal funding by representing that it did have a contract with Plaintiff. The breach of contract action was tried to a jury; after two hours of deliberation, the jury returned a defense verdict. Following the trial, Defendant moved to dismiss the *qui tam* action, in part on grounds that damages under the False Claims Act are essentially punitive in nature, and there is a presumption against imposing punitive damages against governmental entities based on a recent U. S. Supreme Court decision. The District Court agreed and dismissed the *qui tam* action. *U.S. ex rel. Honeywell, Inc. v. San Francisco Housing Authority*, 83

Fed.Appx. 181 (9th Cir. 2003); *Honeywell v. San Francisco Housing Authority*, 164 F.Supp.2d 1130 (2001)

Carter v. Regents of the University of California - Personal injury case, brain damage. Plaintiff was a 31 year-old environmental engineer with multiple degrees from the University of California. He claimed that as a result of his injury he could no longer speak without stuttering and stammering, walk without assistance or, among other things, hold thoughts in his memory. The jury awarded plaintiff \$24,000, which was substantially less than a 998 offer of \$100,000 and a defense offer to settle for \$1 million during trial.

Jones v. Regents of the University of California - An employee sued Defendant alleging race discrimination and retaliation, after learning from a co-worker that the co-worker had been instructed by more senior managers not to hire Plaintiff because she had previously sued Defendant for race discrimination and had settled for a substantial sum. Plaintiff claimed she became so upset upon learning of the alleged retaliation that she was committed to a psychiatric hold by her treating therapist. During the trial, Plaintiff called an employee who admitted to the retaliation. Defense verdict – jury trial.

Warner v. Albertson's Stores - Plaintiff alleged wrongful termination and violation of the Americans with Disabilities Act (ADA), culminating in a three-week trial in the United States District Court for the Northern District of California, before Judge Thelton Henderson. Defense verdict – jury trial.

Chan v. Regents of the University of California - Plaintiff claimed retaliation based on gender and national origin under FEHA in this tenure case. Defense verdict – jury trial.

Burns v. California State Automobile Association - A supervisor sued for alleged sexual harassment based on hostile work environment in a historically all male workplace. Defense verdict – bench trial.

Tampas-Berger v. McKesson HBOC, Inc. - A 17-year employee with generally good annual evaluations alleged age and sex discrimination when terminated six months after working for a new and younger manager. Defense verdict – jury trial.

Lenau v. Taco Bell - Plaintiff alleged wrongful termination and breach of contract. Defense verdict – bench trial.

Orozco v. Lucky Stores - Plaintiff alleged discrimination based on national origin and breach of contract. Defense verdict – jury trial.

Schmucker v. Port of Oakland - Plaintiff, an amputee, claimed he was harassed and that his employer failed to accommodate his disability. After a four-week trial, the jury deliberated for four hours. Defense verdict – jury trial.

King-Scott v. Regents of the University of California - Plaintiff alleged race discrimination. Defense verdict – jury trial.

Rosenthal v. Regents of the University of California - Lafayette & Kumagai assumed responsibility for the case from another firm twenty days prior to trial. Plaintiff alleged twenty-nine individual acts of retaliation against twenty-nine different decision makers. Settlement efforts had been unsuccessful. After a one-month jury trial, Plaintiff was awarded \$45,000, which was approximately one-third of the amount Defendant offered as settlement prior to the commencement of trial.

FDIC v. Berr – *United States District Court, Eastern District* - Lafayette & Kumagai represented the FDIC in a bankruptcy adversary proceeding seeking to avoid the borrower’s discharge of debt to the FDIC. This action involved a “straw borrower” who was alleged to have conspired with insiders in a scheme to defraud the Indian Springs State Bank in Kansas. The debtor sought to discharge his debt in bankruptcy and offered as his defense the fact that the bank vice president knew he was acting as a “straw borrower.” Lafayette & Kumagai relied upon *D’Oench Duhme & Company v. FDIC*, 315 U.S. 447 (1942) in a successful defense at trial. *In re Berr (Berr v. FDIC)*, 172 BR 299 (9th Cir. BAP 1994)

In Re Villa Serena Partners – *U.S. Bankruptcy Court, Northern District of California* - This matter involved a complex Chapter 11 case wherein the firm’s client, the Resolution Trust Corporation, sought to obtain relief from an automatic stay and foreclosed upon a one hundred and eleven (111) unit congregate care facility located in the Santa Clara County. This foreclosure resulted in a trial lasting only two days after the firm showed that the plan of reorganization was not feasible.

Unicom Computers v. International Business Machines - Lafayette & Kumagai represented IBM in a preference action filed by debtor Unicom Computers, represented by the bankruptcy firm of Goldberg, Stinnett & MacDonald. The claim involved a \$1 million dispute. IBM prevailed at trial after successfully arguing that IBM met the “ordinary course of business” exception. *In re Unicom Corp.*, 21 F.3d 1116 (9th Cir. 1994)

Oliver v. Oakland Housing Authority - Lafayette & Kuamgai successfully represented the Oakland Housing Authority in this two-month trial involving the complaints of 56 residents for alleged unlawful evictions, retaliation and habitability violations including violence and crime. Each plaintiff was required to establish individual liability and individual damages. A loss to any one of the 56 plaintiffs would have

required Defendant to pay attorneys' fees for all, which could easily have exceeded \$1 million. The jury returned defense verdicts on all claims after five hours of deliberation. Defense verdict – jury trial.

Miller v. City of Oakland - After a landslide in the Oakland Hills, thirteen Plaintiffs claimed their houses were damaged by a faulty city road. Gary Lafayette, counsel for the City of Oakland, was designated as lead defense counsel by the Court. As lead defense counsel, Mr. Lafayette successfully obtained a defense verdict for the City of Oakland and for the co-defendant, East Bay Municipal Utility District. Defense verdict – jury trial.

Meskunas v. San Francisco Housing Authority - Lafayette & Kumagai successfully represented the San Francisco Housing Authority in an action by residents who sought to prevent the construction of new low income housing in the Western Addition. The residents claimed that the City violated the California Environmental Quality Act by improperly issuing construction, demolition and conditional-use permits to the Housing Authority. Lafayette & Kumagai prevailed at trial and successfully opposed emergency writs to the Court of Appeal and California Supreme Court. The firm then successfully argued the matter on appeal. Defense verdict – jury trial.