

11/22/2023

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF SAN MATEO

12
13 JOSEPH LUIS MARTIN, on behalf of himself
and all others similarly situated, and the
14 general public,

15 *Plaintiff,*

16 v.

17 SILVER STRAND, INC., a California
corporation; WORKYARD, INC., a Delaware
18 corporation; WORKYARD HOLDINGS,
INC., a Delaware corporation; and DOES 1
19 through 50, inclusive,

20 *Defendants.*
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Case No.: 23CIV04473

Amended As a Matter of Right Pursuant to
Labor Code Section 2699.3(a)(2)(C)

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198);
2. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
3. Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1 and 1198);
4. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
5. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
6. Failure to Indemnify (Lab. Code § 2802);
7. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and
8. Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff JOSEPH LUIS MARTIN (“Plaintiff”), on behalf of himself, all others similarly
2 situated, the State of California, and the general public, complains and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendants SILVER
5 STRAND, INC., a California corporation; WORKYARD, INC., a Delaware corporation;
6 WORKYARD HOLDINGS, INC., a Delaware corporation; and DOES 1 through 50, inclusive,
7 (collectively referred to as “Defendants”) for alleged violations of the California Labor Code and
8 California Business and Professions Code. As set forth below, Plaintiff alleges that Defendants have:

- 9 a. failed to pay them overtime wages at the correct rate;
- 10 b. failed to pay them double time wages at the correct rate;
- 11 c. failed to pay them overtime and/or double time wages by failing to include all
12 applicable remuneration in calculating the regular rate of pay;
- 13 d. failed to provide them with meal periods;
- 14 e. failed to provide them with rest periods;
- 15 f. failed to pay them premium wages for missed meal and rest periods;
- 16 g. failed to provide them with accurate written wage statements;
- 17 h. failed to reimburse them with necessary business expenditures; and
- 18 i. failed to pay them all of their final wages following separation of employment.

19 Based on these alleged Labor Code violations, Plaintiff now brings this class and
20 representative action to recover unpaid wages, liquidated damages, civil and statutory penalties,
21 restitution and related relief on behalf of himself, all others similarly situated, and the general public.

22 **JURISDICTION AND VENUE**

23 2. This Court has subject matter jurisdiction to hear this case because the monetary
24 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction
25 of the Superior Court of the State of California.

26 3. Venue is proper in the County of San Mateo pursuant to Code of Civil Procedure
27 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
28 that are the subject matter of this Complaint occurred therein and/or each defendant is found,

1 maintains offices, transacts business and/or has an agent therein.

2 4. Venue is proper in San Mateo County because Defendants' have at all times alleged
3 herein, conducted business in San Mateo County, and throughout California. As such, venue is
4 proper in any county in California.

5 **PARTIES**

6 5. Plaintiff JOSEPH LUIS MARTIN is, and at all relevant times mentioned herein, an
7 individual residing in the State of California.

8 6. Plaintiff is informed and believes, and thereupon alleges that Defendant SILVER
9 STRAND, INC. is, and at all relevant times mentioned herein, a California corporation doing business
10 in the State of California.

11 7. Plaintiff is informed and believes, and thereupon alleges that Defendant
12 WORKYARD, INC. is, and at all relevant times mentioned herein, a Delaware corporation doing
13 business in the State of California.

14 8. Plaintiff is informed and believes, and thereupon alleges that Defendant
15 WORKYARD HOLDINGS, INC. is, and at all relevant times mentioned herein, a Delaware
16 corporation doing business in the State of California.

17 9. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
18 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
19 will amend this Complaint to allege the true names and capacities of the DOE defendants when
20 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
21 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
22 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
23 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
24 defendants when ascertained.

25 10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
26 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
27 directors, associates, joint venturers, joint employers, owners, principals or co-participants of some
28 or all of the other defendants, and in doing the things alleged herein, were acting within the course

1 and scope of such relationship and with the full knowledge, consent and ratification by such other
2 defendants.

3 11. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
4 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
5 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
6 and omissions alleged herein.

7 12. This action has been brought and may be maintained as a class action pursuant to Code
8 of Civil Procedure section 382 because there is a well-defined community of interest among the
9 persons who comprise the readily ascertainable classes defined below and because Plaintiff is
10 unaware of any difficulties likely to be encountered in managing this case as a class action.

11 13. **Relevant Time Period:** The relevant time period is defined as the time period
12 beginning four years prior to the filing of this action until judgment is entered.

- 13 a. **Hourly Employee Class:** All persons employed by Defendants, collectively or
14 separately, and/or any staffing agencies and/or any other third parties in hourly or
15 non-exempt positions in California four years prior to the filing of this action and
ending on the date that final judgment is entered in this action (“Hourly Employee
Class”).
- 16 b. **Meal Period Sub-Class:** All **Hourly Employee Class** members who worked in
17 a shift in excess of five hours during the four years prior to the filing of this action
and ending on the date that final judgment is entered in this action.
- 18 c. **Rest Period Sub-Class:** All **Hourly Employee Class** members who worked a
19 shift of at least three and one-half (3.5) hours the four years prior to the filing of
this action and ending on the date that final judgment is entered in this action.
- 20 d. **Waiting Time Penalties Sub-Class:** All **Hourly Employee Class** members who
21 separated from their employment with Defendants during the period beginning
22 three years before the filing of this action and ending when final judgment is
entered.
- 23 e. **Wage Statement Class:** All persons employed by Defendants in California during
24 the period beginning one year before the filing of this action and ending when final
judgment is entered.
- 25 f. **Expense Reimbursement Class:** All persons employed by Defendants in
California who incurred business expenses during the **Relevant Time Period**.
- 26 g. **UCL Class:** All **Hourly Employee Class** and **Expense Reimbursement Class**
27 members employed by Defendants in California during the four years prior to the
filing of this action and ending on the date that final judgment is entered in this
28 action.

1 14. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right
2 to amend or modify the class definitions with greater specificity, by further division into sub-classes
3 and/or by limitation to particular issues.

4 15. **Numerosity:** The class members are so numerous that the individual joinder of each
5 individual class member is impractical. While Plaintiff does not currently know the exact number of
6 class members, Plaintiff is informed and believes, and thereupon alleges that the actual number
7 exceeds the minimum required for numerosity under California law.

8 16. **Commonality and Predominance:** Common questions of law and fact exist as to all
9 class members and predominate over any questions which affect only individual class members.
10 These common questions include, but are not limited to:

- 11 a. Whether Defendants maintained a policy or practice of failing to provide
12 employees with their rest periods;
- 13 b. Whether Defendants maintained a policy or practice of failing to provide
14 employees with their meal periods;
- 15 c. Whether Defendants failed to pay premium wages to class members when they
16 have not been provided with meal and rest periods at the appropriate rates of pay;
- 17 d. Whether Defendants failed to pay minimum and/or overtime wages to class
18 members for all time worked;
- 19 e. Whether Defendants failed to provide class members with accurate written wage
20 statements as a result of providing them with written wage statements with
21 inaccurate entries for, among other things, amounts of gross and net wages, and
22 total hours worked;
- 23 f. Whether Defendants applied policies or practices that result in late and/or
24 incomplete final wage payments;
- 25 g. Whether Defendants failed to reimburse class members for all necessary business
26 expenses incurred during the discharge of their duties;
- 27 h. Whether Defendants are liable to class members for waiting time penalties under
28 Labor Code section 203; and

i. Whether class members are entitled to restitution of money or property that Defendants may have acquired from them through unfair competition;

17. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff is informed and believes and thereupon alleges that Defendants have a policy or practice of failing to comply with the California Labor Code and Business and Professions Code as alleged in this Complaint.

18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise conflict with, the interests of absent class members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly and adequately represent and protect the interests of the other class members.

19. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent class members.

20. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of the class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

GENERAL ALLEGATIONS

21. Plaintiff worked for Defendants as a non-exempt employee during the relevant and statutory periods.

22. Defendants had a common policy and practice of systemically failing to pay Plaintiff

1 and Class members proper wages and overtime for all hours worked, at the proper rates of pay. First,
2 Defendants implemented an unlawful time-rounding policy and practice which rounded down and
3 reduced the actual working hours recorded by Plaintiff and Class Members, and upon which their pay
4 was based, and generally did so to the detriment of the Plaintiff and Class Members, and these
5 unlawfully rounded time entries were inputted into Defendants' payroll system from which wage
6 statements and payroll checks were created. Defendants did so with the ostensible intent of paying
7 Plaintiff and Class members only for the hours they were scheduled to work, rather than the hours
8 they were actually under Defendants' control. Plaintiff contends this policy is not neutral and results,
9 over time, to the detriment of the Plaintiff and Class members by systematically undercompensating
10 them.

11 23. Next, Plaintiff and Class Members were also consistently required to perform work,
12 off-the-clock, for which they were not paid wages. Defendants implemented a policy of requiring
13 Plaintiff and Class Members to perform work during unpaid meal periods, for which no wages were
14 paid. The forgoing and uncompensated working time was under the direction and control of
15 Defendants, for which no wages were paid.

16 24. This uncompensated time caused Plaintiff and Class Members to work in excess of
17 eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Plaintiff
18 and Class Members to minimum and overtime wages, which they were systemically denied.

19 25. Defendants had a common policy and practice of systemically denying Plaintiff and
20 Class Members the opportunity to take meal periods in compliance with the California Law.
21 Specifically, due to understaffing and heavy workloads, Plaintiff and Class Members were denied the
22 opportunity to take timely meal periods prior to the completion of their fifth hour of work. Also,
23 Plaintiff's and Class Members' meal periods were consistently interrupted due to the need to complete
24 various work-related tasks. Furthermore, Plaintiff and Class Members were not relieved of all work
25 duties during unpaid meal periods and were required to keep working during meal breaks.

26 26. Plaintiff and Class Members were not provided with meal periods of at least thirty (30)
27 minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal
28 period as part of each work shift and (2) Defendants' practice of requiring putative class members to

1 continue working through their meal and rest periods due to the excessive workload.

2 27. Defendants had a common policy and practice of systemically denying Plaintiff and
3 Class Members the opportunity to take rest periods in compliance with the California Law. Plaintiff
4 and Class Members were not provided with rest periods of at least ten (10) minutes for each four (4)
5 hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest
6 period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2)
7 no formal compliant written rest period policy that encouraged employees to take their rest periods,
8 or that properly advised Plaintiff and Class Members of their rest period rights; (3) Defendants' policy
9 and practice of requiring putative class members to continue working through their rest breaks due to
10 the excessive workload.

11 28. Furthermore, Defendants failed to pay Plaintiff and Class Members premium pay
12 wages at their appropriate regular rates of pay for each meal and rest period denied.

13 29. Plaintiff and Class Members were not provided with accurate wage statements as
14 mandated by law pursuant to Labor Code section 226. Specifically, Defendants failed to issue wage
15 statements as "a detachable part of the check, draft, or voucher paying the employee's wages, or
16 separately if wages are paid by personal check or cash, an accurate itemized statement in writing."
17 Additionally, the wage statements issued to Plaintiff and Class Members were not recorded in "ink
18 or other indelible form."

19 30. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
20 earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

21 31. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked
22 by the employee" were not accurately reflected in that: all hours worked, including overtime, were
23 not included.

24 32. Defendants failed to comply with Labor Code section 226(a)(5) as "net wages earned"
25 were not accurately reflected in that: all hours worked, including overtime, were not included.

26 33. Defendants failed to comply with Labor Code section 226(a)(6) as the wage statements
27 issued to Plaintiff and Class Members failed to reflect the "the inclusive dates of the period for which
28 the employee is paid."

34. Defendants failed to comply with Labor Code section 226(a)(7) as the wage statements issued to Plaintiff and Class Members failed to reflect the “the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number.”

35. Defendants failed to comply with Labor Code section 226(a)(8) as “the name and address of the legal entity that is the employer” was not properly reflected on the wage statements.

36. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that: all hours worked, including overtime, were not included.

37. Furthermore, Defendants failed to provide Plaintiff and Class Members with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE Opinion Letters. Plaintiff's and Class Members' wage statement were only provided in electronic format in violation of Labor Code § 226.

38. Plaintiff and Class Members were not reimbursed for business expenses incurred in executing their duties under Defendant's employ. Specifically, Plaintiff and Class Members were required to use their personal cellular phones to clock in and out of work as well as communicate on the job site, all necessary to perform their duties under Defendants' employ. Additionally, Plaintiff and Class Members were required to clean and maintain their uniforms, which were required to be worn by Defendants. Plaintiff and Class members were not reimbursed for these necessary work-related expenses.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, 1174, and 1198)

(Plaintiff and Meal Period Sub-Class)

39. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if fully alleged herein.

40. At all relevant times, Plaintiff and the **Meal Period Sub-Class** members have been

1 non-exempt employees of Defendant entitled to the full meal period protections of both the Labor
2 Code and the applicable Industrial Welfare Commission Wage Order.

3 41. Labor Code section 512 and Section 11 of the applicable Industrial Welfare
4 Commission Wage Order impose an affirmative obligation on employers to provide non-exempt
5 employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period
6 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
7 minutes for each work period of ten hours.

8 42. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
9 Commission Wage Order (“Wage Order”) both prohibit employers from requiring employees to work
10 during required meal periods and require employers to pay non-exempt employees an hour of
11 premium wages on each workday that the employee is not provided with the required meal period.

12 43. Compensation for missed meal periods constitutes wages within the meaning of Labor
13 Code section 200.

14 44. Labor Code section 1198 makes it unlawful to employ a person under conditions that
15 violate the applicable Wage Order.

16 45. Section 11 of the applicable Wage Order states:

17 No employer shall employ any person for a work period of more than
18 five (5) hours without a meal period of not less than 30 minutes, except
19 that when a work period of not more than six (6) hours will complete
20 the day’s work the meal period may be waived by mutual consent of
21 the employer and employee. Unless the employee is relieved of all duty
22 during a 30 minute meal period, the meal period shall be considered an
23 ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal
24 period shall be permitted only when the nature of the work prevents an
25 employee from being relieved of all duty and when by written
26 agreement between the parties an on-the-job paid meal period is agreed
27 to. The written agreement shall state that the employee may, in writing,
28 revoke the agreement at any time.

24 46. At all relevant times, Plaintiff was not subject to a valid on-duty meal period
25 agreement. Plaintiff is informed and believes that, at all relevant times, **Meal Period Sub-Class**
26 members were not subject to valid on-duty meal period agreements with Defendants.

27 47. Plaintiff alleges that, at all relevant times during the applicable limitations period,
28 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**

1 **Sub-Class** with uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5)
2 hour work period, as required by Labor Code section 512 and the applicable Wage Order. Specifically,
3 due to understaffing and heavy workloads, Plaintiff and **Meal Period Sub-Class** members were
4 denied the opportunity to take timely meal periods prior to the completion of their fifth hour of work.
5 Also, Plaintiff's and **Meal Period Sub-Class** members' meal periods were consistently interrupted
6 due to the need to complete various work-related tasks. Furthermore, Plaintiff and **Meal Period Sub-**
7 **Class** members were not relieved of all work duties during unpaid meal periods and were required to
8 keep working during meal breaks.

9 48. Plaintiff alleges that, at all relevant times during the applicable limitations period,
10 Defendants maintained a policy or practice of failing to pay premium wages to **Meal Period Sub-**
11 **Class** members when they worked five (5) hours without clocking out for any meal period.

12 49. Plaintiff alleges that, at all relevant times during the applicable limitations period,
13 Defendants maintained a policy or practice of not providing Plaintiff and members of the **Meal Period**
14 **Sub-Class** with a second meal period when they worked shifts of ten or more hours and failed to pay
15 them premium wages as required by Labor Code 512 and the applicable Wage Order.

16 50. Moreover, Defendants written policies fail to inform Meal period Class Members of
17 their meal period rights under the Labor Code and applicable Wage Orders.

18 51. At all relevant times, Defendants failed to pay Plaintiff and the **Meal Period Sub-**
19 **Class** members additional premium wages, and/or were not paid premium wages at the employees'
20 regular rates of pay when required meal periods were not provided.

21 52. Pursuant to Labor Code section 204, 218.6, 226.7 and 512, Plaintiff, on behalf of
22 himself and the **Meal Period Sub-Class** members, seek to recover unpaid premium wages, interest
23 thereon, and costs of suit.

24 53. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
25 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the
26 **Meal Period Sub-Class** members, seek to recover reasonable attorneys' fees.

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1 rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that
2 encouraged employees to take their rest periods, or that properly advised Plaintiff and **Rest Period**
3 **Sub-Class** members of their rest period rights; (3) Defendants' policy and practice of requiring
4 putative class members to continue working through their rest breaks due to the excessive workload.

5 62. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-Class**
6 members additional premium wages when required rest periods were not provided.

7 63. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of himself
8 and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
9 costs of suit.

10 64. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
11 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and **Rest**
12 **Period Sub-Class** members, seek to recover reasonable attorneys' fees.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PAY HOURLY AND OVERTIME WAGES**

15 **(Lab. Code §§ 223, 510, 1194, 1197 and 1198)**

16 **(Plaintiff and Hourly Employee Class)**

17 65. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
18 herein.

19 66. At all relevant times, Plaintiff and **Hourly Employee Class** members are or have been
20 non-exempt employees of Defendants entitled to the full protections of the Labor Code and the
21 applicable Wage Order.

22 67. Section 2 of the applicable Wage Order defines "hours worked" as "the time during
23 which an employee is subject to the control of the employer, and includes all the time the employee
24 is suffered or permitted to work, whether or not required to do so."

25 68. Section 4 of the applicable Wage Order requires an employer to pay non-exempt
26 employees at least the minimum wage set forth therein for all hours worked, which consist of all hours
27 that an employer has actual or constructive knowledge that employees are working.

28 69. Labor Code section 1194 invalidates any agreement between an employer and an

1 employee to work for less than the minimum or overtime wage required under the applicable Wage
2 Order.

3 70. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated
4 damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition
5 to the underlying unpaid minimum wages and interest thereon.

6 71. Labor Code section 1197 makes it unlawful for an employer to pay an employee less
7 than the minimum wage required under the applicable Wage Order for all hours worked during a
8 payroll period.

9 72. Labor Code section 1197.1 provides that it is unlawful for any employer or any other
10 person acting either individually or as an officer, agent or employee of another person, to pay an
11 employee, or cause an employee to be paid, less than the applicable minimum wage.

12 73. Labor Code section 1198 makes it unlawful for employers to employ employees under
13 conditions that violate the applicable Wage Order.

14 74. Labor Code section 204 requires employers to pay non-exempt employees their earned
15 wages for the normal work period at least twice during each calendar month on days the employer
16 designates in advance and to pay non-exempt employees their earned wages for labor performed in
17 excess of the normal work period by no later than the next regular payday.

18 75. Labor Code section 223 makes it unlawful for employers to pay their employees lower
19 wages than required by contract or statute while purporting to pay them legal wages.

20 76. Labor Code section 510 and Section 3 of the applicable Wage Order require employees
21 to pay non-exempt employees overtime wages of no less than one and one-half times their respective
22 regular rates of pay for all hours worked in excess of eight hours in one workday, all hours worked in
23 excess of forty hours in one workweek, and/or for the first eight hours worked on the seventh
24 consecutive day of one workweek.

25 77. Labor Code section 510 and Section 3 of the applicable Wage Order also require
26 employers to pay non-exempt employees overtime wages of no less than two times their respective
27 regular rates of pay for all hours worked in excess of twelve hours in one workday and for all hours
28 worked in excess of eight hours on a seventh consecutive workday during the workweek.

1 78. Plaintiff is informed and believes that, at all relevant times, Defendants have applied
2 centrally devised policies and practices to her and **Hourly Employee Class** members with respect to
3 working conditions and compensation arrangements.

4 79. At all relevant times, Defendants failed to pay hourly wages to Plaintiff and **Hourly**
5 **Employee Class** members for all time worked, including but not limited to, overtime hours at
6 statutory and/or agreed rates.

7 80. Plaintiff and **Hourly Employee Class** members were not paid proper wages and
8 overtime for all hours worked, at the proper rates of pay. First, Defendants implemented an unlawful
9 time-rounding policy and practice which rounded down and reduced the actual working hours
10 recorded by Plaintiff and **Hourly Employee Class**, and upon which their pay was based, and
11 generally did so to the detriment of the Plaintiff and **Hourly Employee Class**, and these unlawfully
12 rounded time entries were inputted into Defendants' payroll system from which wage statements and
13 payroll checks were created. Defendants did so with the ostensible intent of paying Plaintiff and
14 **Hourly Employee Class** members only for the hours they were scheduled to work, rather than the
15 hours they were actually under Defendants' control. Plaintiff contends this policy is not neutral and
16 results, over time, to the detriment of the Plaintiff and **Hourly Employee Class** members by
17 systematically undercompensating them.

18 81. Next, Plaintiff and **Hourly Employee Class** members were also consistently required
19 to perform work, off-the-clock, for which they were not paid wages. Defendants implemented a policy
20 of requiring Plaintiff and **Hourly Employee Class** members to perform work during unpaid meal
21 periods, for which no wages were paid. The forgoing and uncompensated working time was under
22 the direction and control of Defendants, for which no wages were paid.

23 82. This uncompensated time caused Plaintiff and **Hourly Employee Class** members to
24 work in excess of eight (8), ten (10), and twelve (12) hours a day and/or forty (40) hours a week,
25 entitling Plaintiff and **Hourly Employee Class** members to minimum and overtime wages, which
26 they were systemically denied.

27 83. As a result of Defendants' unlawful conduct, Plaintiff and **Hourly Employee Class**
28 members have suffered damages in an amount, subject to proof, to the extent they were not paid the

1 full amount of wages earned during each pay period during the applicable limitations period,
2 including overtime wages.

3 84. Pursuant to Labor Code sections 204, 218.6, 223, 510, 1194 and 1194.2, Plaintiff, on
4 behalf of himself and **Hourly Employee Class** members, seek to recover unpaid straight time and
5 overtime wages, interest thereon and costs of suit.

6 85. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
7 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and
8 **Hourly Employee Class** members, seek to recover reasonable attorneys' fees.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

11 **(Lab. Code § 226)**

12 **(Plaintiff and Wage Statement Penalties Sub-Class)**

13 86. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
14 herein.

15 87. Labor Code section 226(a) states:

16 An employer, semimonthly or at the time of each payment of wages,
17 shall furnish to his or her employee, either as a detachable part of the
18 check, draft, or voucher paying the employee's wages, or separately if
19 wages are paid by personal check or cash, an accurate itemized
20 statement in writing showing (1) gross wages earned, (2) total hours
21 worked by the employee, except as provided in subdivision (j), (3) the
22 number of piece-rate units earned and any applicable piece rate if the
23 employee is paid on a piece-rate basis, (4) all deductions, provided that
24 all deductions made on written orders of the employee may be
25 aggregated and shown as one item, (5) net wages earned, (6) the
26 inclusive dates of the period for which the employee is paid, (7) the
27 name of the employee and only the last four digits of his or her social
28 security number or an employee identification number other than a
social security number, (8) the name and address of the legal entity that
is the employer and, if the employer is a farm labor contractor, as
defined in subdivision (b) of Section 1682, the name and address of the
legal entity that secured the services of the employer, and (9) all
applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the
employee and, beginning July 1, 2013, if the employer is a temporary
services employer as defined in Section 201.3, the rate of pay and the
total hours worked for each temporary services assignment. The
deductions made from payment of wages shall be recorded in ink or
other indelible form, properly dated, showing the month, day, and year,
and a copy of the statement and the record of the deductions shall be

1 kept on file by the employer for at least three years at the place of
2 employment or at a central location within the State of California. For
3 purposes of this subdivision, 'copy' includes a duplicate of the itemized
statement provided to an employee or a computer-generated record that
accurately shows all of the information required by this subdivision.

4 88. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize the
5 "detachable part of the check" provision and the "accurate itemized statement in writing" provision
6 of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee
7 retains the right to elect to receive a written paper stub or record and that those who are provided with
8 electronic wage statements retain the ability to easily access the information and convert the electronic
9 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

10 89. Plaintiff is informed and believes that, at all relevant times during the applicable
11 limitations period, Defendants have failed to provide **Wage Statement Class** members with written
12 wage statements as described above. Additionally, the wage statements issued to class members failed
13 to account for the unpaid minimum wages, overtime, and premium pay wages described above.
14 Moreover, the wage statements issued to Plaintiff and Class Members failed to reflect the: "the
15 inclusive dates of the period for which the employee is paid;" "the name of the employee and only
16 the last four digits of his or her social security number or an employee identification number other
17 than a social security number;" and "the name and address of the legal entity that is the employer" in
18 violation of Labor Code §§ 226(a) (6), (7), and (8) respectively.

19 90. Furthermore, Defendants failed to provide Plaintiff and **Wage Statement Class**
20 Members with paper pay stubs as required by Labor Code § 226, applicable Wage Orders, and DLSE
21 Opinion Letters. Plaintiff's and **Wage Statement Class** members' wage statement were only
22 provided in electronic format in violation of Labor Code § 226.

23 91. Plaintiff is informed and believes that Defendants' failure to provide her and **Wage**
24 **Statement Class** members with accurate written wage statements were intentional in that Defendants
25 have the ability to provide them with accurate wage statements but have intentionally provided them
26 with written wage statements that Defendants have known do not comply with Labor Code section
27 226(a).

28 92. Plaintiff and **Wage Statement Class** members have suffered injuries, in that

1 Defendants have violated their legal rights to receive accurate wage statements and have misled them
2 about their actual rates of pay and wages earned. In addition, inaccurate information on their wage
3 statements have prevented immediate challenges to Defendants' unlawful pay practices, has required
4 discovery and mathematical computations to determine the amount of wages owed, has caused
5 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the
6 submission of inaccurate information about wages and deductions to federal and state government
7 agencies.

8 93. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of himself and **Wage**
9 **Statement Class** members, seek the greater of actual damages or \$50.00 for the initial pay period in
10 which a violation of Labor Code section 226(a) occurred, and \$100.00 for each subsequent pay period
11 in which a violation of Labor Code section 226(a) occurred, not to exceed an aggregate penalty of
12 \$4000.00 per class member, as well as awards of reasonable attorneys' fees and costs.

13 **FIFTH CAUSE OF ACTION**

14 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

15 **(Lab. Code §§ 201-203)**

16 **(Plaintiff and Waiting Time Penalties Sub-Class)**

17 94. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
18 herein.

19 95. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members have
20 been entitled, upon the end of their employment with Defendants, to timely payment of all wages
21 earned and unpaid before termination or resignation.

22 96. At all relevant times, pursuant to Labor Code section 201, employees who have been
23 discharged have been entitled to payment of all final wages immediately upon termination.

24 97. At all relevant times, pursuant to Labor Code section 202, employees who have
25 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to
26 payment of all final wages at the time of resignation.

27 98. Plaintiff is informed and believes that, at all relevant time during the applicable
28 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**

1 members all of their final wages in accordance with the Labor Code.

2 99. Plaintiff is informed and believes that, at all relevant times during the applicable
3 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
4 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
5 sections 201 or 202 by failing to timely pay them all final wages.

6 100. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
7 timely pay all final wages to her and **Waiting Time Penalties Sub-Class** members have been willful
8 in that Defendants have the ability to pay final wages in accordance with Labor Code sections 201
9 and/or 202 but have intentionally adopted policies or practices that are incompatible with those
10 requirements.

11 101. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of himself and
12 **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their
13 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

14 102. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
15 and/or the common fund doctrine, Plaintiff, on behalf of himself and **Waiting Time Penalties Sub-**
16 **Class** members, seek awards of reasonable attorneys' fees and costs.

17 **SIXTH CAUSE OF ACTION**

18 **FAILURE TO INDEMNIFY**

19 **(Lab. Code § 2802)**

20 **(Plaintiff and Reimbursement Class)**

21 103. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
22 herein.

23 104. Labor Code section 2802(a) states:

24 An employer shall indemnify his or her employee for all necessary
25 expenditures or losses incurred by the employee in direct consequence
26 of the discharge of his or her duties, or of his or her obedience to the
directions of the employer, even though unlawful, unless the employee,
at the time of obeying the directions, believed them to be unlawful.

27 105. Plaintiff and **Expense Reimbursement Class Members** were not reimbursed for
28 business expenses incurred in executing their duties under Defendant's employ. Specifically, Plaintiff

1 and **Expense Reimbursement Class** members were required to use their personal cellular phones to
2 clock in and out of work as well as communicate on the job site, all necessary to perform their duties
3 under Defendants' employ. Additionally, Plaintiff and **Expense Reimbursement Class** members
4 were required to clean and maintain their uniforms, which were required to be worn by Defendants.
5 Plaintiff and **Expense Reimbursement Class** members were not reimbursed for these necessary
6 work-related expenses.

7 106. Accordingly, Plaintiff and **Expense Reimbursement Class** members are entitled to
8 restitution for all unpaid amounts due and owing to within four years of the date of the filing of the
9 Complaint and until the date of entry of judgment.

10 107. Plaintiff, on behalf of himself, and **Expense Reimbursement Class** members, seeks
11 interest thereon and costs pursuant to Labor Code section 218.6, and reasonable attorneys' fees
12 pursuant to Code of Civil Procedure section 1021.5.

13 **SEVENTH CAUSE OF ACTION**

14 **UNFAIR COMPETITION**

15 **(Bus. & Prof. Code §§ 17200 *et seq.*)**

16 **(Plaintiff and UCL Class)**

17 108. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
18 herein.

19 109. Business and Professions Code section 17200 defines "unfair competition" to include
20 any unlawful business practice.

21 110. Business and Professions Code section 17203-17204 allow a person who has lost
22 money or property as a result of unfair competition to bring a class action in accordance with Code
23 of Civil Procedure section 382 to recover money or property that may have been acquired from
24 similarly situated persons by means of unfair competition.

25 111. California law requires employers to pay hourly, non-exempt employees for all hours
26 they are permitted or suffered to work, including hours that the employer knows or reasonable should
27 know that employees have worked.

28 112. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIRST,

1 SECOND, THIRD, and SIXTH causes of action herein.

2 113. Plaintiff lost money or property as a result of the aforementioned unfair competition.

3 114. Defendants have or may have acquired money by means of unfair competition.

4 115. Plaintiff is informed and believes and thereupon alleges that by committing the Labor
5 Code violations described in this Complaint, Defendants violated Labor Code sections 215, 216, 225,
6 226.6, 226.7, 227.3, 354, 408, 512, 510, 553, 1175, 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199,
7 and 2802 as well as applicable Wage Orders, which make it a misdemeanor to commit the violations
8 alleged herein.

9 116. Defendants have committed criminal conduct through their policies and practices of,
10 *inter alia*, failing to comport with their affirmative obligations as an employer to: provide non-exempt
11 employees with compliant meal and rest periods; pay for all hours worked at the proper rates of pay;
12 proper sick time pay; reporting time pay; and reimbursement for necessary business expenditures.

13 117. Defendants' unlawful conduct as alleged in this Complaint amounts to and constitutes
14 unfair competition within the meaning of Business and Professions Code section 17200 *et seq.*
15 Business and Professions Code sections 17200 *et seq.* protects against unfair competition and allows
16 a person who has suffered an injury-in-fact and has lost money or property as a result of an unfair,
17 unlawful or fraudulent business practice to seek restitution on his own behalf and on behalf of
18 similarly situated persons in a class action proceeding.

19 118. As a result of Defendants' violations of the Labor Code during the applicable
20 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
21 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants' conduct.

22 119. Plaintiff is informed and believes that other similarly situated persons have been
23 subject to the same unlawful policies or practices of Defendants.

24 120. Due to the unfair and unlawful business practices in violation of the Labor Code,
25 Defendants have gained a competitive advantage over other comparable companies doing business in
26 the State of California that comply with their legal obligations.

27 121. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
28 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act violates

1 or is considered unlawful under any other state or federal law.

2 122. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
3 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
4 Defendants, and each of them, and their agents and employees, from further violations of the Labor
5 Code and applicable Wage Orders.

6 123. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiff
7 requests the issuance of temporary, preliminary and permanent injunctive relief enjoining
8 Defendants, and each of them, and their agents and employees, from further violations of the Labor
9 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek an
10 order permanently enjoining Defendants, and each of them, and their respective agents and
11 employees, from further violations of the Labor Code and applicable Industrial Welfare Commission
12 Wage Orders.

13 124. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
14 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
15 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
16 and unfair business practices.

17 125. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
18 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
19 reasonable attorneys' fees in connection with their unfair competition claims.

20 126. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
21 himself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
22 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
23 and unfair business practices.

24 127. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
25 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
26 reasonable attorneys' fees in connection with their unfair competition claims.

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1 **EIGHTH CAUSE OF ACTION**

2 **CIVIL PENALTIES**

3 **(Lab. Code §§ 2698, *et seq.*)**

4 128. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

5 129. During the applicable limitations period, Defendants have violated Labor Code §§
6 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 515, 558, 558.1, 1174, 1174.5, 1182.12, 1185,
7 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, and 2802.¹

8 130. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself
9 and other current and former employees, to bring a representative civil action to recover civil penalties
10 pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or
11 maintained as a class action pursuant to Code of Civil Procedure section 382.

12 131. Plaintiff, a former employee against whom Defendants committed one or more of the
13 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
14 within the meaning of Labor Code § 2699(c). Plaintiff was employed by Defendants as a non-exempt
15 hourly employee in California. Aggrieved Employees include all non-exempt hourly employees of
16 Defendants within the state of California from one year prior to the date of this letter and continuing
17 through the present (Plaintiff and Aggrieved Employees are collectively referred to herein as
18 “Aggrieved Employees”)

19 132. Plaintiff has complied with the procedures for bringing suit specified in Labor Code §
20 2699.3. Notice was provided to the California Labor & Workforce Development Agency (“LWDA”)
21 and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an intent to
22 investigate.

23 133. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
24 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226.7, 226(a), 510,
25 _____

26 ¹ Plaintiff hereby reserves the right to seek penalties on behalf of all Aggrieved Employees, for
27 Defendants’ violations of the applicable provisions of the Labor Code, suffered by Aggrieved
28 Employees, but not directly suffered by Plaintiff under *Huff v. Securitas Security Services USA, Inc.*
(2018) 23 Cal.App.5th 745.

1 512, 1174, 1194, 1194.2, 1197, 1197.1, 1198, and 2802:

- 2 i. For violations of Labor Code §§ 201, 202, 203, 226.7, 1174, 1194, 1198 and
3 2802, one hundred dollars (\$100) for each employee per pay period for each
4 initial violation and two hundred dollars (\$200) for each employee per pay
5 period for each subsequent violation (penalties set by Labor Code §
6 2699(f)(2));
- 7 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding thirty
8 (30) days' pay as waiting time (penalties set by Labor Code § 256);
- 9 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
10 employee for each initial violation that was neither willful nor intentional, two
11 hundred dollars (\$200) for each employee, plus 25% of the amount unlawfully
12 withheld from each employee, for each initial violation that was either willful
13 or intentional, and two hundred dollars (\$200) for each employee, plus twenty-
14 five percent (25%) of the amount unlawfully withheld from each employee,
15 for each subsequent violation, regardless of whether the subsequent violation
16 was either willful or intentional (penalties set by Labor Code § 210);
- 17 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
18 employee for each initial violation that was neither willful nor intentional, two
19 hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of
20 the amount unlawfully withheld from each employee, for each initial violation
21 that was either willful or intentional, and two hundred dollars (\$200) for each
22 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
23 from each employee, for each subsequent violation, regardless of whether the
24 subsequent violation was either willful or intentional (penalties set by Labor
25 Code § 225.5);
- 26 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
27 citation, two hundred and fifty dollars (\$250) for each employee for each
28 violation. Alternatively, if an initial citation or its equivalent occurred before

1 the filing of this action, one thousand dollars (\$1,000) for each employee for
2 each violation (penalties set by Labor Code § 226.3);

3 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
4 employee for each initial pay period for which the employee was underpaid,
5 and one hundred dollars (\$100) for each employee for each subsequent pay
6 period for which the employee was underpaid (penalties set by Labor Code §
7 558);

8 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
9 aggrieved employee for each initial violation of Labor Code § 1197 that was
10 intentional and two hundred and fifty dollars (\$250) for each aggrieved
11 employee per pay period for each subsequent violation of Labor Code § 1197,
12 regardless of whether the initial violation was intentional (penalties set by
13 Labor Code § 1197.1);

14 viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable
15 attorneys' fees and costs in connection with Plaintiff's claims for civil
16 penalties.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general
19 public, prays for relief and judgment against Defendants as follows:

- 20 a. An order that the action be certified as a class action;
21 b. An order that Plaintiff be appointed class representative;
22 c. An order that counsel for Plaintiff be appointed class counsel;
23 d. Unpaid wages and overtime;
24 e. Actual damages;
25 f. Liquidated damages;
26 g. Unreimbursed expenses;
27 h. Restitution;
28 i. Declaratory relief;

- j. Pre-judgment interest;
- k. Statutory penalties;
- l. Civil penalties;
- m. Costs of suit;
- n. Reasonable attorneys' fees; and
- o. Such other relief as the Court deems just and proper.

Dated: November 22, 2023

D.LAW, INC.



Emil Davtyan
David Yerejian
David Keledjian
David Arakelyan
Attorneys for Plaintiff
JOSEPH LUIS MARTIN, and the putative class

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby demands a jury trial on all issues so triable.

Dated: November 22, 2023

D.LAW, INC.



Emil Davtyan
David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiff
JOSEPH LUIS MARTIN, and the putative class

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I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 880 E Broadway, Glendale, CA 91205.

Silver Strand, Inc.

Workyard Holdings, Inc.

Workyard, Inc.

Agent for Service of Process
440 N Barranca Ave 9675
Covina, Ca 91723

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[] (COURTESY COPY BY ELECTRONIC TRANSMISSION) by use of email by scanning the documents and any and all documents and emailing them to email addresses above.

[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 22, 2023, at Glendale, California

Jordan Floyd