

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA,  
HAYWARD HALL OF JUSTICE

PEOPLE OF THE STATE OF CALIFORNIA

v.

**LANCE SILVA**

Defendant(s).

COMPLAINT NO.

PFN: DRX073      CEN: 5295090

T/A 2/4/2015 @ 2:00 P.M. in Dept. 502

The Undersigned, being sworn says, on information and belief, that LANCE SILVA did, in the County of Alameda, State of California, on or about from September 19, 2011 to November 14, 2011, commit a Felony, to wit: EMBEZZLEMENT BY TRUSTEE, a violation of section 506a of the PENAL CODE of California, in that said defendant(s) did fraudulently appropriate to a use and purpose not in the due and lawful execution of his trust money and personal property entrusted to him by OCTAVIO VALDEZ. It is further alleged that the value of said property exceeded nine hundred fifty dollars (\$950).

**SECOND COUNT**

The Undersigned further deposes and says on Information and belief, that said LANCE SILVA did, in the County of Alameda, State of California, on or about from September 19, 2007 to November 14, 2011, commit a Felony, to wit: GRAND THEFT, a violation of section 487(a) of the PENAL CODE of California, in that said defendant(s) did unlawfully take money and personal property of a value exceeding Nine Hundred Fifty Dollars (\$950), to wit MONEY the property of OCTAVIO VALDEZ.

**THIRD COUNT**

The Undersigned further deposes and says on Information and belief, that said LANCE SILVA did, in the County of Alameda, State of California, between September 19, 2011 to November 14, 2011, commit a Felony, to wit: EMBEZZLEMENT BY TRUSTEE, a violation of section 506a of the PENAL CODE of California, in that said defendant(s) did fraudulently appropriate to a use and purpose not in the due and lawful execution of his trust money and personal property entrusted to him by JOSE TORRES. It is further alleged that the value of said property exceeded nine hundred fifty dollars (\$950).

**FOURTH COUNT**

The Undersigned further deposes and says on Information and belief, that said LANCE SILVA did, in the County of Alameda, State of California, on or about from September 19, 2007 to November 14, 2011, commit a Felony, to wit: GRAND THEFT, a violation of section 487(a) of the PENAL CODE of California, in that said defendant(s) did unlawfully take money and personal property of a value exceeding Nine Hundred Fifty Dollars (\$950), to wit MONEY the property of JOSE TORRES.

#### **FIFTH COUNT**

The Undersigned further deposes and says on Information and belief, that said LANCE SILVA did, in the County of Alameda, State of California, on or about from September 19, 2011 to November 14, 2011, commit a Felony, to wit: EMBEZZLEMENT BY TRUSTEE, a violation of section 506a of the PENAL CODE of California, in that said defendant(s) did fraudulently appropriate to a use and purpose not in the due and lawful execution of his trust money and personal property entrusted to him by ISMAEL BANUELOS. It is further alleged that the value of said property exceeded nine hundred fifty dollars (\$950).

#### **SIXTH COUNT**

The Undersigned further deposes and says on Information and belief, that said LANCE SILVA did, in the County of Alameda, State of California, on or about from September 19, 2007 to November 14, 2011, commit a Felony, to wit: GRAND THEFT, a violation of section 487(a) of the PENAL CODE of California, in that said defendant(s) did unlawfully take money and personal property of a value exceeding Nine Hundred Fifty Dollars (\$950), to wit MONEY the property of ISMAEL BANUELOS

#### **SEVENTH COUNT**

The Undersigned further deposes and says on Information and belief, that said LANCE SILVA did, in the County of Alameda, State of California, on or about from September 19, 2011 to November 14, 2011, commit a Felony, to wit: EMBEZZLEMENT BY TRUSTEE, a violation of section 506a of the PENAL CODE of California, in that said defendant(s) did fraudulently appropriate to a use and purpose not in the due and lawful execution of his trust money and personal property entrusted to him by ANTON NORMAN. It is further alleged that the value of said property exceeded nine hundred fifty dollars (\$950).

#### **EIGHTH COUNT**

The Undersigned further deposes and says on Information and belief, that said LANCE SILVA did, in the County of Alameda, State of California, on or about from September 19, 2007 to November 14, 2011, commit a Felony, to wit: GRAND THEFT, a violation of section 487(a) of the PENAL CODE of California, in that said defendant(s) did unlawfully take money and personal property of a value exceeding Nine Hundred Fifty Dollars (\$950), to wit MONEY the property of ANTON NORMAN.

#### **NINTH COUNT**

The Undersigned further deposes and says on Information and belief, that said LANCE SILVA did, in the County of Alameda, State of California, on or about from September 19, 2011 to November 14, 2011, commit a Felony, to wit: IDENTITY THEFT, a violation of section 530.5(a) of the PENAL CODE of California, in that said defendant(s) did willfully and unlawfully obtain personal identifying information of OCTAVIO VALDEZ and used that information for an unlawful purpose and to obtain, and attempt to obtain, credit, goods, services, real property and medical and information in the name of OCTAVIO VALDEZ without consent.

#### **TENTH COUNT**

The Undersigned further deposes and says on Information and belief, that said LANCE SILVA did, in the County of Alameda, State of California, on or about from September 19, 2011 to November 14, 2011, commit a Felony, to wit: IDENTITY THEFT, a violation of section 530.5(a) of the PENAL CODE of California, in that said defendant(s) did willfully and unlawfully obtain personal identifying information of JOSE TORRES and used that information for an unlawful purpose and to obtain, and attempt to obtain, credit, goods, services, real property and medical and information in the name of JOSE TORRES without consent.

**ELEVENTH COUNT**

The Undersigned further deposes and says on Information and belief, that said LANCE SILVA did, in the County of Alameda, State of California, on or about from September 19, 2011 to November 14, 2011, commit a Felony, to wit: IDENTITY THEFT, a violation of section 530.5(a) of the PENAL CODE of California, in that said defendant(s) did willfully and unlawfully obtain personal identifying information of ISMAEL BANUELOS and used that information for an unlawful purpose and to obtain, and attempt to obtain, credit, goods, services, real property and medical and information in the name of ISMAEL BANUELOS without consent.

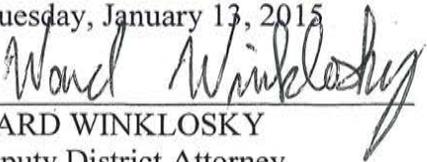
**TWELFTH COUNT**

The Undersigned further deposes and says on Information and belief, that said LANCE SILVA did, in the County of Alameda, State of California, on or about from September 19, 2011 to November 14, 2011, commit a Felony, to wit: IDENTITY THEFT, a violation of section 530.5(a) of the PENAL CODE of California, in that said defendant(s) did willfully and unlawfully obtain personal identifying information of ANTON NORMAN and used that information for an unlawful purpose and to obtain, and attempt to obtain, credit, goods, services, real property and medical and information in the name of ANTON NORMAN without consent.

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by Penal Code Section 1054.3.

Complainant therefore prays that a warrant issue and that said defendant(s) be dealt with according to law.

Subscribed and sworn to before me,  
Tuesday, January 13, 2015

  
WARD WINKLOSKY  
Deputy District Attorney  
State Bar #248013 ic  
Alameda County, California

  
Investigator Paolo Baligaya  
U.S. Department of Labor  
CEPD No. 14F0703

**Defendant's Name:** LANCE SILVA  
**PFN:** DRX073  
**CEN:** 5295090  
**CEPD REPORT #:** 14F0703

**DECLARATION IN SUPPORT OF PROBABLE CAUSE**

**THE UNDERSIGNED HEREBY DECLARES:**

1. That he is an INVESTIGATOR with the U.S. DEPARTMENT OF LABOR, San Francisco, California.
2. That the contents of this declaration provides probable cause to believe the above-named defendant committed the following offenses:
  - a. PC § 506a x's 4
  - b. PC § 487(a) x's 4
  - c. PC § 530.5(a) x's 4

3. I declare under information and belief that the following is true and correct:

The U.S. Department of Labor, Employee Benefits Security Administration (EBSA), has responsibility for the administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), which sets standards governing the operation of private sector employee benefit plans. Under ERISA Section 506(b), EBSA has the authority to investigate criminal violations of ERISA.

ERISA obligates the fiduciaries of 401(k) pension plans to forward contributions withheld from employees' wages to the plan's trust fund for investment. Employee contributions must be forwarded as soon as they can be reasonably segregated from the employer's general assets, but no later than the 15<sup>th</sup> business day of the month following the month of withholding. After this time period, these funds become the property of the plan, and fiduciaries are prohibited from using such plan assets for their own use or the use of another.

EBSA opened its criminal case on Defendant Lance Silva on October 24, 2013. The case was open base on a complaint from victim Octavio Valdez, a participant in the National Upholstering Company 401(k) Profit Sharing Plan. EBSA's investigation revealed that from September 19, 2011 to November 14, 2011, Silva withdrew a total of \$43,380.36 from the 401(k) accounts of four participants – Octavio Valdez, Jose Torres, Ismael Banuelos, and Anton Norman. Silva accomplished this by replacing their names and mailing addresses with his. Once he changed the name and address, he called Fidelity and requested a distribution.

National Upholstering Company was a furniture manufacturing company located at 4000 Adeline St., Emeryville, CA. The company ceased operations in 2010. According to interviews of plan participants, the company was owned by Silva's father. After Silva's father passed away, Silva assumed control of the business. Silva assigned documents using the title "president."

From September 19, 2011 to November 14, 2011, Defendant Silva withdrew \$43,380.36 from the 401(k) accounts of the four victims. Silva withdrew over \$7,000 from the account of Octavio Valdez. Silva withdrew over \$5,000 from the account of Jose Torres. Silva withdrew over \$2,000 from the account of Ismael Banuelos. Silva withdrew over \$9,000 from the account of Anton Norman. Fidelity issued 7 checks made payable to "Lance Silva" or a similar variation. The endorsement on the back of the checks is similar to Silva's signature on the Adoption Agreement and Fidelity Service Agreement.

Fidelity provided EBSA with a report of name and address changes made to the participant accounts. The report shows that personal information attributable to the four victim participants was altered by someone with the user ID WZR733C and BATCHCNT. Fidelity's records show the user WZR733C belongs to Silva. According to Fidelity, the used "WZR733C" indicates that Silva altered the victim participants' personal information using their online system. The "BATCHCNT" user ID indicates a change not made using Fidelity's online system. According to Fidelity, a BATCHCNT user ID can indicate a change made over the phone.

Fidelity further provided EBSA with audio recordings of Silva making distribution requests from the victim participants' accounts. In the recordings, Silva makes the requests posing as Lance Silva, Lance Silvas, Lance D. Silvas, Anton Norman, and Ismael Banuelos.

Dated: 1/15/15 at Oakland, California

  
Investigator's (Signature)

INVESTIGATOR PAOLO BALIGAYA  
Investigator (Please Print Name)

#### CERTIFICATE OF PROBABLE CAUSE

The Court, upon the review of this declaration, hereby

Finds

Does not Find

good cause to detain the above-named individual.

Date: \_\_\_\_\_

Time: \_\_\_\_\_

\_\_\_\_\_  
Magistrate of the Superior Court

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF ALAMEDA

3 THE PEOPLE OF THE STATE OF CALIFORNIA

4 Plaintiff,

Docket No.:

5  
6 v.

CEPD No.: 14F0703

7 **LANCE SILVA**

8 **10 Diablo Creek Court**

**NOTICE OF COMPLAINT**

9 **Danville, CA 94506**

PFN: DRX073

10 Defendant.

CEN: 5295090

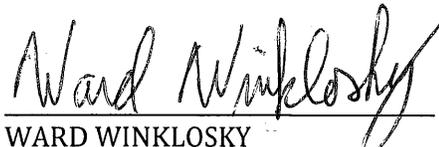
11  
12 This notice is to inform you that a criminal complaint and summons has been filed  
13 against you. Your case has been placed on calendar in **Dept. No.: 502 of the Hayward Hall of**  
14 **Justice Courthouse, 24405 Amador Street, Hayward, CA 94588-8559 on February 4, 2015**  
15 **at 2:00 P.M.**

16 You are required to appear for your arraignment. Failure to appear will result in a  
17 warrant being issued for your arrest.

18 DATED: 1/13/15

NANCY E. O'MALLEY  
District Attorney

19  
20 By:

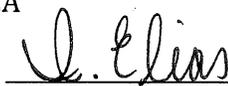
  
WARD WINKLOSKY  
Deputy District Attorney

21  
22  
23 **DECLARATION OF SERVICE BY (C.C.P. 1013A(3), 2015.5)**

24  
25 On the date shown below, I served the foregoing document by depositing a true copy thereof,  
26 enclosed in a separate, sealed envelope, with the postage thereon fully prepaid, in the United  
27 States mailbox at 7677 Oakport Street, Suite 650, Oakland, California.

28 I declare under penalty of perjury that the foregoing is true and correct.

Executed on 14<sup>th</sup> day of January 2015 at Oakland, CA

  
I. Elias

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF ALAMEDA

3 THE PEOPLE OF THE STATE OF CALIFORNIA

4 Plaintiff,

Docket No.:

5 v.

6 CEPD No.: 14F0703

7 LANCE SILVA

8 P.O. BOX 57

NOTICE OF COMPLAINT

9 Diablo, CA 94528

10 PFN: DRX073

11 Defendant.

CEN: 5295090

12 This notice is to inform you that a criminal complaint and summons has been filed  
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18 DATED: 1/13/15

19 NANCY E. O'MALLEY  
District Attorney

20 By:

21 Ward Winklosky  
22 WARD WINKLOSKY  
Deputy District Attorney

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28 Executed on 14<sup>th</sup> day of January 2015 at Oakland, CA

I. Elias  
I.Elias

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 COUNTY OF ALAMEDA

3 THE PEOPLE OF THE STATE OF CALIFORNIA

4 Plaintiff,

Docket No.:

5  
6 v.

CEPD No.: 14F0703

7 LANCE SILVA

8 11307 Grayson Road

NOTICE OF COMPLAINT

9 Patterson, CA 95363

PFN: DRX073

10 Defendant.

CEN: 5295090

11  
12 This notice is to inform you that a criminal complaint and summons has been filed  
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14 **Justice Courthouse, 24405 Amador Street, Hayward, CA 94588-8559 on February 4, 2015**  
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District Attorney

20 By:

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22 WARD WINKLOSKY  
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Executed on 14<sup>th</sup> day of January 2015 at Oakland, CA

I. Elias  
I.Elias