

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mel Red Recana

MESSRELIAN LAW INC.

Harout Messrelian, Esq. (272020)
500 N. Central Ave., Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983
E-mail: hm@messrelianlaw.com

Attorneys for Plaintiff Marc Mengue Da Silva

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARC MENGUE DA SILVA,

Plaintiff,

vs.

RAMTEX INC.; TOP FABRIC INC.;
RAMIN KORORI; and DOES 1 to 25,
inclusive,

Defendants.

) CASE NO.: 22STCV18399

) **COMPLAINT FOR DAMAGES FOR:**

) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**

) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**

) **3) FAILURE TO PAY OVERTIME;**

) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**

) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**

) **6) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**

) **7) FAILURE TO PROVIDE REST**
) **BREAKS;**

) **8) FAILURE TO PROVIDE MEAL**
) **BREAKS;**

) **9) FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES;**

) **10) FAILURE TO PROVIDE**
) **PERSONNEL RECORDS;**

) **11) FAILURE TO PROVIDE PAY**
) **RECORDS;**

) **12) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**

) **13) VIOLATION OF BUSINESS AND**
) **PROFESSIONS CODE SECTION**
) **17200**

1) **JURY TRIAL DEMANDED**
2)
3)
4)
5)

6
7 COMES NOW Plaintiff, MARC MENGUE DA SILVA (hereinafter "Plaintiff"), and
8 alleges as follows:

9 **PARTIES, JURISDICTION, and VENUE**

10 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
11 County of Los Angeles in this judicial district because Defendants RAMTEX INC.; TOP
12 FABRIC INC.; RAMIN KORORI; and DOES 1 to 25, inclusive, (hereinafter collectively
13 known as "Defendant(s)" or "RAMTEX"), do business in the County of Los Angeles, and
14 because Defendants' obligations and liabilities arise therein, and because the work that was
15 performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover,
16 Plaintiff's damages sought herein exceed \$25,000.

17 2. Plaintiff is a male resident of the County of Los Angeles, State of California.

18 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
19 RAMTEX INC. is a California corporation, and is doing business in the County of Los Angeles,
20 State of California, and which employed Plaintiff.

21 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
22 TOP FABRIC INC. is a California corporation, and is doing business in the County of Los
23 Angeles, State of California, and which employed Plaintiff.

24 5. Plaintiff is informed and believes that at all times herein mentioned, Defendant
25 RAMIN KORORI is a male resident of the County of Los Angeles, State of California, and an
26 owner, director, officer, and/or managing agent of Defendants RAMTEX INC. and TOP
27 FABRIC INC. RAMIN KORORI is being included in this lawsuit pursuant to California Labor
28 Code Section 558.1 for the specific labor code violations alleged herein as he controlled the

1 hours, wages, and working conditions of Plaintiff and was directly involved in the day-to-day
2 operations both named businesses. RAMTEX INC. and TOP FABRIC INC. are “joint
3 employers” in that they both controlled the wages, hours, and working conditions of Mr. Silva
4 and other hourly, non-exempt employees. Moreover, RAMTEX INC. and TOP FABRIC INC.
5 would also be considered an “integrated enterprise” under the law in that the following are
6 present: (1) interrelation of operations; (2) common management; (3) centralized control of labor
7 relations; and (4) common ownership or financial control.

8 6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
9 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
10 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
11 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
12 for the conduct alleged herein. Upon discovering the true names and capacities of these
13 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
14 capacities of these fictitiously named defendants.

15 7. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
16 that information and belief, alleges that at all times herein mentioned, each of the remaining
17 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
18 under the authority of their agency, employment, or representative capacity, with the consent of
19 his/her codefendants.

20 **GENERAL ALLEGATIONS**

21 8. Plaintiff started working for RAMTEX in the latter part of 2021 as an “ecommerce
22 specialist”. Plaintiff’s employment ended in February 2022. During his employment tenure,
23 Plaintiff was classified as an hourly, non-exempt employee and earned \$25 per hour.

24 9. RAMTEX has committed the below labor code violations against Plaintiff and other
25 hourly, non-exempt employees. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal.
26 App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant
27 Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a
28 year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his
claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of

1 wages upon termination of employment and weekly payment of wages to temporary
2 employees. The trial court determined Huff was not a temporary employee, and therefore,
3 lacked standing to bring the claim. Thus, Securitas was granted a motion for summary
4 judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a
5 new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor
6 Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA
7 statute only allows the PAGA representative to sue for violations that the representative has
8 personally suffered. The PAGA statute states that an “aggrieved employee” is able to file suit
9 on behalf of themselves and others. The statute also states that an “aggrieved employee” is
10 “any person who was employed by the alleged violator and against whom one or more of the
11 alleged violations was committed.” Because at least one of the violations that Huff had alleged
12 had affected him personally, the Court of Appeal denied Securitas’ motion.

13 10. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
14 other employees, it allows for suits broader than the specific violations the named employee
15 experienced. Therefore, even if the employee did not personally experience the Labor Code
16 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
17 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
18 other hourly, non-exempt employees.

19 11. Furthermore, it is Plaintiff’s position that RAMTEX has committed numerous labor
20 code violations against Plaintiff and other hourly, non-exempt employees who worked for
21 RAMTEX at any of their California locations during the relevant PAGA period:

22 12. RAMTEX did not provide Plaintiff and other similarly situated aggrieved employees
23 with the minimum wages to which they were entitled for all work performed and did not
24 compensate him and others for all hours worked pursuant to California Labor Code sections
25 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and consistently
26 worked “off the clock” for several reasons. First, Plaintiff did work before clocking in for work
27
28

1 or after clocking out for work in the form of sending emails and the company was
2 unequivocally aware of the latter. Furthermore, the company had a policy and practice of
3 rounding down work hours to the detriment of employees, which is akin to a minimum wage
4 violation. Moreover, to the extent employees such as Plaintiff and others worked through their
5 meal periods or their meal periods were interrupted, they were not compensated for that time,
6 which would be akin to a minimum wage violation. In addition, RAMTEX would adjust
7 Plaintiff's and others' work hours.

8 13. To the extent RAMTEX argues that Plaintiff was properly classified as a salaried,
9 exempt employee, that would also be in contravention of California law since Plaintiff would
10 not be exempt under the professional exemption, executive exemption, or administrative
11 exemption. Moreover, he didn't earn enough money per month and the "salary basis test" is not
12 met.

13 14. RAMTEX also violated Labor Code §510 based on the above "off the clock" work
14 because it failed to pay Plaintiff and others similarly situated correct and accurate overtime
15 compensation, even though they worked more than 8 hours per day, 12 hours per day and/or 40
16 hours per week throughout their employment. Plaintiff and others were paid weekly and the "off
17 the clock" work would have entitled Plaintiff and others to either daily overtime (over 8 hours
18 per day) or weekly overtime (over 40 hours per week). Furthermore, one look at Plaintiff's
19 paystubs will indicate a rounding issue in that Plaintiff's hours, for example, on his paystub for
20 the pay period of January 22, 2022 through January 28, 2022 is exactly 40.00 on the dot. The
21 latter is not consistent with reality. Moreover, RAMTEX did not factor in the bonuses and other
22 incentive pay deciphering Plaintiff's regular rate of pay for purposes of figuring out the overtime
23 rate of pay.

24 15. RAMTEX violated Labor Code § 226.7 along with Industrial Welfare Commission Wage
25 Order no. 4/7 because it failed to provide Plaintiff and other similarly situated aggrieved
26 employees 10-minute rest periods for every four hours of work, or majority portion thereof,
27 throughout their employment. RAMTEX did not completely relieve Plaintiff of all duty during
28

1 said rest periods. RAMTEX did not pay to Plaintiff one additional hour of pay at Plaintiff's
2 regular rate of compensation for each workday that one or more statutory rest periods was not
3 provided. Rest breaks were not authorized or enforced at the company. In fact, it was not part of
4 RAMTEX's culture for employees such as Plaintiff and others to take at least one 10-minute rest
5 break every day wherein they are relieved of all work duties. As such, rest breaks were not
6 enforced and were not taken by Plaintiff and other similarly situated aggrieved employees.
7 Plaintiff did not take a single rest period while working for RAMTEX and this is consistent with
8 the company culture and practice for other hourly, non-exempt employees.

9 16. RAMTEX also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
10 Commission Wage Order No. 4/7 because it failed to provide Plaintiff and other similarly
11 situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five
12 (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal
13 periods. RAMTEX did not completely relieve Plaintiff of all duties during said meal periods.
14 RAMTEX did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of
15 compensation for each workday that one or more statutory meal periods was not provided. If
16 RAMTEX had Plaintiff sign a meal period waiver, it would not be valid and enforceable since
17 Plaintiff and others generally worked more than a 6-hour shift. If RAMTEX had Plaintiff sign
18 an on-duty meal period agreement wherein Plaintiff agreed to work through his meal period, it
19 would also be invalid and unenforceable because the nature of Plaintiff's job does not prevent
20 him from taking a meal period. As such, Plaintiff and others did not consistently receive
21 statutory, timely meal periods during their employment. In other words, there wasn't always an
22 uninterrupted and timely 30-minute meal period for any employees, including Plaintiff, that was
23 taken before the 5th hour worked. There were numerous occasions wherein Plaintiff and others
24 would take their meal periods AFTER the 5th hour worked. In fact, if Plaintiff was able to take a
25 meal break, it was often interrupted several times a week wherein Plaintiff would be eating at
26 his desk AND answering emails at the same time or doing other work-related tasks. As was the
27 case with rest periods, consistent meal breaks were definitively not part of the RAMTEX's
28 culture. The meal periods were not always authorized and were not enforced. Furthermore,

1 Plaintiff and others did not even clock out for their meal periods and so there was no accurate
2 record of meal period compliance and there is a presumption that meal periods were not provided
3 and taken per California law.

4 17. Furthermore, even if RAMTEX did in fact provide meal or rest period penalties to
5 Plaintiff and others for late, short, interrupted, or no meal or rest periods, that does not absolve
6 RAMTEX of PAGA penalties. In Kirby v. Immoos Fire Protection, Inc. (2012) 53 Cal.4th 1244,
7 1256, the Court stated that “section 226.7 does not give employers a lawful choice between
8 providing *either* meal and rest breaks *or* an additional hour of pay” (emphasis in original). Thus,
9 the extra hour of pay does not excuse the violation; the employer has still committed a violation
10 even if the remedy for the violation has been paid. See also Wert v. U.S. Bancorp (S.D. Cal. Mar.
11 22, 2016, 2016 WL 1110302 at *4).

12 18. Furthermore, during the relevant time period, and due to the above-cited labor code
13 violations, RAMTEX failed to pay Plaintiff and other similarly situated aggrieved employees all
14 wages due to them within any time period specified by California Labor Code section 204,
15 including the minimum wages and overtime as described above as well as meal/rest break
16 premiums. RAMTEX was also in violation of California Labor Code section 226(a) by not
17 providing access to paystubs and failing to include pertinent information on the wage statements,
18 including but not limited to, all hours worked, gross wages earned, net wages earned, all
19 deductions, premium payments for meal and rest breaks, overtime compensation, the correct
20 legal name and address of the employing entity (in this case, Plaintiff arguably worked for both
21 RAMTEX INC. and TOP FABRIC INC. however both of those entities did NOT appear on the
22 paystubs which is a facial violation), the correct beginning and end of the pay period, all
23 applicable hourly rates, and all identifying employee information, among other items. As such,
24 RAMTEX did not provide Plaintiff and other similarly situated aggrieved employees with
25 complete, accurate itemized wage statements. Moreover, Plaintiff and others were not given
26 access to their paystubs.

27 19. RAMTEX violated Labor Code § 203 because it willfully failed to pay Plaintiff and other
28

1 similarly situated aggrieved employees earned and due wages upon separation of employment,
2 either immediately upon involuntary termination, or within 72 hours of resignation. These earned
3 but unpaid wages include compensation for all hours worked including minimum wages,
4 overtime, and premiums for the missed meal and rest breaks.

5 20. During the relevant time period, RAMTEX also failed to keep accurate and complete
6 payroll records showing the actual hours worked per day (including the time for meal periods)
7 and the wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code
8 sections 1174(d).

9 21. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
10 business-related expenses and costs that were not reimbursed by RAMTEX. These costs include,
11 but are not limited to, use of personal cell phones (app on phone) and computers/laptops for work
12 purposes. Accordingly, RAMTEX was in violation of California Labor Code sections 2800 and
13 2802. In addition, RAMTEX failed to provide a suitable rest break area for employees such as
14 Plaintiff and others in contravention of Industrial Welfare Commission Wage Order no. 4-
15 2001/7-2001.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

18 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of**
19 **Regulations Title 8 Section 11040/11070, and California Labor Code Section 1198)**

20 **(Plaintiff against All Named Defendants and all DOE Defendants)**

21 22. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 21, inclusive, of this Complaint as though fully set forth herein.

23 23. At all times relevant herein, Defendants were required to compensate its employees for
24 all hours worked upon reporting for work at the appointed time stated by the employer
25 pursuant to Industrial Welfare Commission Order 4-2001/7-2001, California Code of
26 Regulations, Title 8, Section 11040/11070.

27 24. For the three (3) years preceding filing of this action, Defendants failed to compensate
28

1 Plaintiff for all hours worked.

2 25. Under the aforementioned wage order and regulations, Plaintiff is to recover
3 compensation for all hours worked but not paid by Defendants for the three (3) years
4 preceding the filing of this Complaint.

5 26. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
6 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
7 this Court.

8 27. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
9 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
10 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
11 reasonable attorney's fees and costs of suit.

12 28. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
13 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
14 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

17 **(California Labor Code Sections 1194, 1194.2, 1197)**

18 **(Plaintiff against All Named Defendants and all DOE Defendants)**

19 29. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 28, inclusive, of this Complaint as though fully set forth herein.

21 30. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
22 to suffer or permit a California employee to work without paying wages at the minimum wage
23 rate for all hours worked as required by the applicable Industrial Welfare Commission
24 (hereinafter "IWC") Wage Order No. 4-2001/7-2001, codified at California Code of
25 Regulations, Title 8, Section 11040/11070, subdivision 4.

26 31. Pursuant to IWC Wage Order no. 4-2001/7-2001, subdivision 2(H)/(G), at all relevant
27 times, "hours worked" included "the time during which an employee is subject to the control of
28 an employer, and includes all the time the employee is suffered or permitted to work, whether
or not required to do so..."

1 32. During his employment, Plaintiff was regularly required as a matter of uniform
2 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
3 was paid less than the minimum wage rate by Defendants for hours worked in violation of
4 California Labor Code Section 1197 and the applicable California Industrial Wage
5 Commission wage order(s).

6 33. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
7 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
8 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
9 to believe that their acts or omissions were not contrary to California law.

10 34. For all hours worked by Plaintiff for which he was paid less than the minimum wage
11 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
12 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
13 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
14 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

15 35. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
17 trial.

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME**

20 **(California Industrial Welfare Commission Order 4-2001, California Code of
21 Regulations Title 8 Section 11040/11070)**

22 **(Plaintiff against All Named Defendants and all DOE Defendants)**

23 36. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 35, inclusive, of this Complaint as though fully set forth herein.

25 37. Pursuant to Industrial Welfare Commission Order No. 4-2001/7-2001, California Code
26 of Regulations, Title 8, Section 11040/11070, for the period of Plaintiff's employment,
27 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
28 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in

1 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
2 consecutive workday in a week.

3 38. Plaintiff was a non-exempt employee entitled to the protections of the California
4 Industrial Welfare Commission Order No. 4-2001/7-2001, California Code of Regulations,
5 Title 8, Section 11040/11070.

6 39. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
7 single workweek on numerous occasions.

8 40. Plaintiff was entitled to the above overtime premiums.

9 41. Defendants did not pay Plaintiff premium wages of at least one and one-half times
10 Plaintiff's regular rate of pay for hours worked past eight (8) in a day or twelve (12) in a day.

11 42. Defendants did not pay Plaintiff premium wages of at least one and one-half times
12 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

13 43. Plaintiff worked at least one pay period in which he was not properly paid overtime
14 within the three (3) years prior to the initiation of this lawsuit.

15 44. Defendants know or should know the actual dates of overtime worked, the amount of
16 overtime worked, and the amount of unpaid overtime due.

17 45. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
18 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
19 Court.

20 46. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
21 Regulations, Title 8, Sections 11040/11070, Plaintiff is entitled to recover damages for the
22 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
23 reasonable attorney's fees and costs of suit.

24 47. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
25 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
26 trial.

27 **FOURTH CAUSE OF ACTION**

28 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

(California Labor Code Sections 201, 202, 203)

1 **(Plaintiff against all named defendants and all DOE defendants)**

2 48. Plaintiff re-alleges and incorporates by reference each and every allegation in
3 paragraphs 1 through 47, inclusive, of this Complaint as though fully set forth herein.

4 49. Pursuant to California Labor Code Section 201(a), an employer who discharges an
5 employee must immediately pay for all compensation due and owing.

6 50. Pursuant to California Labor Code Section 202, when an employee resigns, the
7 employer must pay all compensation due and owing within 72 hours of resignation, or on the
8 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

9 51. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
10 without abatement or reduction, any wages of an employee whose employment ends, the wages
11 of the employee shall continue as a penalty from the due date at the same rate until paid or until
12 an action is commenced; however, the wages shall not continue for more than 30 days for
failure to pay an employee owed wages.

13 52. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
14 continue to refuse to pay him unpaid wages as required by Labor Code Section 203.

15 53. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
17 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
18 preceding the filing of this lawsuit.

19 54. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
20 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
21 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

22 55. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
23 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
24 trial.

25 **FIFTH CAUSE OF ACTION**

26 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

27 **(California Labor Code Section 226)**
28

1 **(Plaintiff against All Named Defendants and all DOE Defendants)**

2 56. Plaintiff re-alleges and incorporates by reference each and every allegation in
3 paragraphs 1 through 55, inclusive, of this Complaint as though fully set forth herein.

4 57. Pursuant to California Labor Code Section 226, every employer must furnish each
5 employee an itemized statement of wages and deductions at the time of payment of wages.

6 58. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs
7 that accurately reflected all information required by Labor Code Section 226, including but not
8 limited to, accurate figures for gross wages earned, net wages earned, total hours worked by
9 the employee (regular and overtime), all deductions, premium pay for missed rest breaks
10 and meal breaks, the correct start and end of the pay period, the correct name and address of
11 the legal employer, and business expense reimbursement. Therefore, Defendants failed to
12 maintain and provide accurate itemized wage statements to Plaintiff in accordance with
California Labor Code Section 226(a).

13 59. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
14 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
15 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
16 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
17 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
18 the 1-year period immediately preceding the date this lawsuit was filed.

19 60. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
20 sustained damages, including loss of earnings, in an amount to be established at trial. As a
21 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
22 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
23 and attorney's fees pursuant to statute.

24 61. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
25 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
26 trial.

27 **SIXTH CAUSE OF ACTION**

28 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

1 (California Labor Code Section 204)

2 (Plaintiff against All Named Defendants and all DOE Defendants)

3 62. Plaintiff re-alleges and incorporates by reference each and every allegation in
4 paragraphs 1 through 61, inclusive, of this Complaint as though fully set forth herein.

5 63. California Labor Code Section 204 establishes the fundamental right of all
6 employees in the State of California to be paid wages in a timely fashion for their work.

7 64. At all times relevant during the liability period, Defendants failed to pay
8 Plaintiff the full amount of all owed wages when due as required by California Labor Code
9 Section 204.

10 65. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
11 informed, believes, and thereon alleges, that all times relevant during the liability period,
12 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
13 including overtime hours and the minimum wage as well as premiums for missed rest breaks
14 and meal breaks.

15 66. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
16 an amount, subject to proof, to the extent he was not paid all wages each pay period. The
17 precise amount of unpaid wages is not presently known to Plaintiff but can be determined
18 directly from Defendants' records or indirectly based on information from Defendants'
19 records.

20 67. Under this cause of action, Plaintiff prays for penalties due under the statutes
21 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
22 proof at trial.

23 **SEVENTH CAUSE OF ACTION**

24 **FAILURE TO GIVE REST BREAKS**

25 (Plaintiff against All Named Defendants and all DOE Defendants)

26 68. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

28 69. Plaintiff brings this cause of action under the following laws, for the following
reasons:

- 1 a. Title 8 of the California Code of Regulations Sections 11040/11070(12)(A), which
2 provides that every employer shall authorize and permit all employees to take rest
3 periods, which insofar as practicable shall be in the middle of each work period. The
4 authorized rest period time shall be based on the total hours worked daily at the rate
5 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 6 b. Title 8 of the California Code of Regulations Sections 11040/11070(12)(B), which
7 provides that if an employer fails to provide an employee a rest period in accordance
8 with the applicable provisions of this order, the employer shall pay the employee one
9 (1) hour of pay at employee's regular rate of compensation for each workday that the
10 rest period is not provided;
- 11 c. Title 8 of the California Code of Regulations sections 11040/11070(20)(A), which
12 penalizes the employer \$50.00 for each initial violation, per employee, of any
13 provision of the Wage Order, and \$100.00 for each additional violation thereafter
14 per employee; and
- 15 d. California Labor Code section 226.7, which states that (a) no employer shall require
16 any employee to work during any rest period mandated by an applicable order of
17 the Industrial Welfare Commission, and (b) if an employer fails to provide an
18 employee a rest period in accordance with an applicable order of the Industrial
19 Welfare Commission, the employer shall pay the employee one (1) additional hour
20 of pay at employee's regular rate of compensation for each work day that the rest
21 period is not provided.

22 70. Plaintiff alleges that he was not authorized and permitted to take a ten (10)
23 minute rest break after every four (4) hours of work or major fraction thereof, as required by
24 California law.

25 71. Under this cause of action, Plaintiff prays for wages due to him under the
26 statutes, regulations, and wage orders alleged in this cause of action along with any allowable
27 interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff
28 prays for the foregoing moneys calculated from 3 years immediately preceding the filing of
this lawsuit.

1 72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and
2 attorney's fees as well as interest under Labor Code section 218.6.

3 73. Under this cause of action, Plaintiff prays for penalties due under the statutes
4 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
5 proof at trial.

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO GIVE MEAL BREAKS**

8 **(Plaintiff against All Named Defendants and all DOE Defendants)**

9 74. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.

11 75. Plaintiff brings this cause of action under the following laws, for the following
12 reasons:

- 13 a. California Labor Code section 512(a), which requires that employees be given a 30-
14 minute uninterrupted meal break after five (5) hours of work, and a second
15 uninterrupted meal break after ten (10) hours of work;
- 16 b. California Labor Code section 226.7, which states that (a) no employer shall require
17 any employee to work during any meal period mandated by an applicable order of
18 the Industrial Welfare Commission, and (b) if any employer fails to provide an
19 employee a meal period in accordance with an applicable order of the Industrial
20 Welfare Commission, the employer shall pay the employee one (1) additional hour
21 of pay at the employee's regular rate of compensation for each workday that the
22 meal period is not provided;
- 23 c. California Industrial Welfare Commission Order No. 4/7 section 11(B), as codified
24 under Title 8 of the California Code of Regulations Section 11040/11070, which
25 states that if an employer fails to provide an employee a meal period in accordance
26 with the applicable provisions of the Wage Order, the employer shall pay the
27 employee one (1) hour of pay at the employee's regular rate of compensation for
28 each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order No. 4/7 Section 7(A)(3), as

codified under Title 8 of the California Code of Regulations Section, which require an employer to maintain records documenting its employees' meal periods;

- e. California Industrial Welfare Commission wage order No. 4/7 Section 20(A), as codified under California Code of Regulations Section 11040/11070, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4/7) as enforceable law.

76. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 4/7, as codified under California Code of Regulations Sections 11040/11070 et. seq., require that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11040/11070 require that if the employer fails to provide the employee with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each workday that the meal period is not given.

77. Under this cause of action, Plaintiff prays for wages due to him under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

78. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

1 79. Under this cause of action, Plaintiff prays for penalties due under the statutes
2 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
3 proof at trial.

4 **NINTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

6 **(Plaintiff against All Named Defendants and all DOE Defendants)**

7 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

9 81. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
10 employee for all necessary expenditures or losses incurred by the employee in direct
11 consequence of the discharge of his or her duties."

12 82. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
13 their duties for Defendants, Plaintiff incurred reasonable and necessary expenses in the course
14 of completing him job duties, which were not reimbursed by Defendants. These expenses
15 include, but are not limited to, use of personal cell phones (app on phone) and computers/laptops
16 for work purposes.

17 83. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and
18 attorney's fees and costs, under Labor Code section 2802.

19 **TENTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE PERSONNEL RECORDS**

21 **(Plaintiff against All Named Defendants and all DOE Defendants)**

22 84. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 83, inclusive, of this Complaint as though fully set forth herein.

24 85. Labor Code section 1198.5 dictates "every current and former employee, or his
25 or her representative, has the right to inspect and receive a copy of the personnel records that
26 the employer maintains relating to the employee's performance or to any grievance concerning
27 the employee."

28 86. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the

1 employer shall make the contents of those personnel records available for inspection to the
2 current or former employee, or his or her representative, at reasonable intervals and at
3 reasonable times..." On information and belief, Defendants intentionally failed to provide
4 Plaintiff with personnel records when requested by Plaintiff via letter on March 2, 2022, as
5 required by law. Plaintiff requested his personnel records in accordance with California Labor
6 Code section 1198.5(k) on March 2, 2022, via U.S. certified mail, return receipt requested.

7 87. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
8 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has
9 suffered and continues to suffer substantial losses related to Defendants' failure to provide
10 personnel records.

11 88. Plaintiff seeks all available remedies for Defendants' violations including, but
12 not limited penalties, and costs to the extent permitted by law and according to proof at trial.
13 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
14 amount of \$750.00, along with costs and attorney's fees.

15 **ELEVENTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE PAY RECORDS**

17 **(Plaintiff against All Named Defendants and all DOE Defendants)**

18 89. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 88, inclusive, of this Complaint as though fully set forth herein.

20 90. Labor Code section 226 sub-section (b) dictates "an employer...shall afford
21 current and former employees the right to inspect or copy records pertaining to their
22 employment, upon reasonable request to the employer..."

23 91. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
24 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
25 pertaining to a current or former employee shall comply with the request as soon as
26 practicable, but no later than 21 calendar days from the date of the request." On information
27 and belief, Defendants intentionally failed to provide Plaintiff with pay records when requested
28 by Plaintiff via certified letter, return receipt requested, on March 2 2022, and as required by
law. Plaintiff requested his pay records in accordance with California Labor Code section 226

1 on March 2, 2022, via certified mail. Defendants failed to provide Plaintiff with an opportunity
2 to inspect or copy his pay records within 21 days.

3 92. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
4 and continues to suffer substantial losses related to Defendants' failure to provide pay records.
5 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
6 amount of \$750.00, along with costs and attorney's fees.

7 93. Plaintiff seeks all available remedies for Defendants' violations including, but
8 not limited penalties, and costs to the extent permitted by law and according to proof at trial.

9 **TWELFTH CAUSE OF ACTION**

10 **PRIVATE ATTORNEYS GENERAL ACT**

11 **Individual and Representative Claim for PAGA penalties under California Labor Code**
12 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5,**
13 **1194, 1197, 1198, 2802, and the applicable Industrial Welfare Commission Wage Order**
Nos. 4-2001/7-2001

14 **(Plaintiff Against All Named Defendants and all DOE Defendants)**

15 94. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 93, inclusive, of this Complaint as though fully set forth herein.

17 95. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
18 Defendants of the specific violations of the California Labor Code that Defendants
19 and DOE defendants have violated and continue to violate.

20 96. Pursuant to California Labor code section 2699.3, no response was received from the
21 LWDA within 65 days of the postmark date of the above-alleged letter.

22 97. Plaintiff therefore has exhausted all administrative remedies required of him under
23 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
24 cause of action and pursue penalties in a representative action for Defendants' violations of the
25 Labor Code.

26 98. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
27
28

1 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
2 departments, divisions, commissions, boards, agencies, or employees for violation of the code
3 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
4 on behalf of himself or herself and other current or former employees pursuant to the
5 procedures specified in California Labor Code section 2699.3.

6 99. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
7 violator and had one or more of the alleged violations committed against him, and therefore is
8 properly suited to represent the interests of other current and former hourly, non-exempt
9 employees who worked for RAMTEX in the State of California at any and all locations during
10 the PAGA period.

11 100. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
12 penalties under California Labor Code sections 2698 and 2699 because of Defendants’
13 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

14 101. Plaintiff therefore has exhausted all administrative remedies required of him under
15 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
16 cause of action and pursue penalties in a representative action for Defendants’ violations of the
17 Labor Code.

18 102. California Labor Code section 2699 et seq. imposes penalties upon culpable
19 Defendants for violating the Labor Code.

20 103. California Labor Code section 558 establishes a civil penalty as follows: Any
21 employer or other person action on behalf of an employer who violates, or causes to be
22 violated, a section of this chapter or any provision regulating hours and days of work in any
23 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
24 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
25 dollars (\$50) for each underpaid employee for each pay period for which the employee was
26 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
27 employee for each pay period for which the employee was underpaid ...;

1 104. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
2 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
3 seeking individual/victim specific relief or underpaid wages under this particular cause of
4 action.

5 105. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
6 the following:

7 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210,
8 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1198, and 2802 via 2698 and
9 2699 any other Labor Codes and Wage Orders (including no. 4/7) violated on the facts
10 alleged in this Complaint.

11 106. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
12 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
13 employees as alleged herein in an amount to be shown according to proof at trial and within the
14 jurisdictional limits of this Court.

15 **THIRTEENTH CAUSE OF ACTION**

16 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

17 **(California Business and Professions Code Section 17200)**

18 **(Plaintiff against corporate Defendants and all DOE Defendants)**

19 107. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 106, inclusive, of this Complaint as though fully set forth herein.

21 108. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendant
22 constitutes unfair and unlawful business practices under California Business and
23 Professions Code Section 17200, et seq.

24 109. Defendant's violations of California labor laws and Labor Code constitutes a business
25 practice because it was done repeatedly over a significant period of time in a systematic manner
26 that was detrimental to Plaintiff and other similarly situated aggrieved employees.

27 110. For the four years preceding the filing of this action, Plaintiff has suffered
28 damages and request damages and/or restitution of all monies and profits to be disgorged from

1 Defendant in an amount according to proof at time of trial, but in excess of the
2 jurisdiction of this Court.

3 **PRAYER FOR RELIEF**

4
5 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
6 follows:

- 7 1. For compensatory damages including lost past and future wages, overtime,
8 commissions, and all other sums of money, including employment benefits, together
9 with interest on said amounts, and any other economic injury to Plaintiff, according to
10 proof;
- 11 2. For special and consequential damages to the extent allowed by law;
- 12 3. For restitution and disgorgement for all unfair business practices by corporate
13 Defendants against Plaintiff in an amount according to proof;
- 14 4. For an order enjoining corporate Defendants from further unfair and unlawful business
15 practices in violation of Business and Professions Code section 17200, et seq.;
- 16 5. For damages and penalties against Defendants under Labor Code section
17 226 for Plaintiff in an amount subject to proof at trial;
- 18 6. For damages and penalties pursuant to Labor Code section 203 against Defendants in
19 an amount subject to proof at trial;
- 20 7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
21 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
- 22 8. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half
23 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
- 24 9. For all remedies available to Plaintiff under the applicable Wage Order and the
25 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
26 liquidated damages, damages, penalties, and waiting time penalties according to proof
27 to the extent permitted by law;
- 28 10. For the imposition of civil penalties and/or statutory penalties;
11. For maximum civil penalties available under the Labor Code and applicable Wage

Order against Defendants as described more particularly in the Complaint and representative PAGA claims;

12. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, PAGA, and/or other applicable laws; and

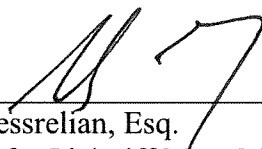
13. Costs and expenses of suit incurred herein;

14. For all interest as allowed by law;

15. For such other and further relief as the Court deems just and proper.

DATED: June 5, 2022

MESSRELIAN LAW INC.

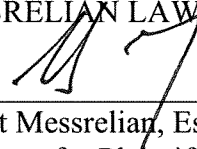
By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Marc Mengue Da Silva

DEMAND FOR JURY TRIAL

Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

DATED: June 5, 2022

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Marc Mengue Da Silva